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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

BEVERLY HEALTH AND REHABILITATION SERVICES, INC.,

Petitioner,

v.

FREDERICK L. FEINSTEIN, GENERAL COUNSEL,
NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Do United States District Courts have jurisdiction under 28 U.S.C. §§1331 and 1337(a) to enforce written voluntary agreements containing preconditions to enforcement that Federal administrative agencies enter with a member of the regulated community?

2. Can Federal administrative agencies nullify written agreements they enter which contain preconditions to enforcement by requiring that parties to such agreements assert defenses based upon the agreement only in administrative proceedings before the agency which are only later subject to court review?

CORPORATE DISCLOSURE

Beverly Health and Rehabilitation Services, Inc., and Beverly Enterprises are subsidiaries or affiliates of Beverly Enterprises and all are publicly held companies.

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INTRODUCTION

Beverly Health and Rehabilitation Services, Inc., hereby petitions this Court to issue a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit to review that court's decision and judgment in *Beverly Health and Rehabilitation Services, Inc. v. Frederick L. Feinstein, General Counsel, National Labor Relations Board*, 103 F.3d 151, reprinted in the Appendix hereto ("App.") at 1a.

OPINIONS BELOW

The subsequent order of the Court of Appeals, denying the Petitioner's Motion for Rehearing and Suggestion for Rehearing *En Banc* is unreported and is reprinted in App. 32a.

The prior order of the Court of Appeals denying Petitioner's Emergency Motion for Stay of Mandate Pending Appeal and for Stay of Administrative Proceeding is unreported and is reprinted in App. 13a.

The Order and Memorandum Opinion of the District Court dismissing Petitioner's Complaint is reported at 152 LRRM 2868 and is reprinted in App. 16a.

The subsequent Order of the District Court denying the Petitioner's motion for Stay Pending Appeal and for Reconsideration is reported at 152 LRRM 2960 and is reprinted in App. 23a.

JURISDICTION

The judgment of the Court of Appeals was issued on December 31, 1996, and a timely Petition for Rehearing and Rehearing *En Banc* was denied on March 4, 1997. This Court has jurisdiction to review the judgment of the Court of Appeals under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved in this Petition include Article III of the United States Constitution, Sections 1331 and 1337(a) United States Code, and Section 3(d) of the Labor Management Relations Act. The texts of these constitutional and statutory provisions are reprinted beginning at App. 181a.

STATEMENT OF THE FACTS

Petitioner ("Beverly") is a nation-wide, long-term health care company operating nursing facilities, institutional pharmacies, acute long-term transitional hospitals, retirement living centers, and home health centers,

Commencing in 1986 the General Counsel of the National Labor Relations Board ("Labor Board") began to apply *case handling procedures* only to unfair labor practice charges filed against Beverly facilities anywhere in the United States (App. 176a, Para. 1). All such charges were transferred from the regional office having geographic jurisdiction over the named Beverly facility under the Labor Board's Regulations and consolidated in one Regional Office (Pittsburgh, Pennsylvania). The Pittsburgh Regional Office "stockpiled" all Beverly charges by steadfastly refusing resolutions typical to such cases, *i.e.*, settlement attempts, deferrals to arbitration, and even requests to withdraw charges voluntarily made by charging parties. The Regional Office then consolidated these accumulated charges into massive "consolidated" complaints against Beverly (App. 176a, Para. 1). Through these procedures the General Counsel sought to deliberately exaggerate the extent of Beverly's alleged unlawful activity. These massively consolidated complaints were an exaggerated effort to "justify" a remedial order applicable to all Beverly

facilities nation-wide regardless of whether the particular facility had even been named in any charge and regardless of whether under accepted Labor Board rules and procedures a sweeping order would be available.

The General Counsel's first attempt to apply extraordinary nation-wide orders against Beverly was adopted by the Labor Board but rejected by the United States Court of Appeals for the Second Circuit.[1] The Court of Appeals stated that minor, "[n]on-hallmark violations at 3% of a company's [nearly 1,000] facilities does [sic] not show an anti-union *animus* amounting to a proclivity to violate the Act," particularly where there was no overall corporate involvement in the alleged unfair labor practices. 17 F.3d at 586.

THE GENERAL COUNSEL'S AGREEMENT WITH BEVERLY

On March 22, 1995, General Counsel Frederick L. Feinstein executed an "Agreement" with Beverly's General Counsel, Robert W. Pommerville (App. 180a). The parties expressed the mutual intention to reach an understanding:

> to permit efficient and timely resolution or litigation of other (Beverly) cases now pending or which may hereafter arise. . .[and] to afford the persons and parties involved therein expeditious relief where possible. . . . (Para. 2, App. 177a).

The General Counsel agreed *in writing* "for the duration of the Agreement" to follow normal case (charge) handling procedures (App. 178a, Para. 5) and not to "stockpile" charges or transfer charges from the Regional Office having original

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[1] *Beverly California Corp.*, 310 NLRB 222 (1993), *enforcement denied*, in pertinent part *sub nom, Torrington Extend-A-Care Employee Assn. v. Beverly California Corp.*, 17 F.3d 580 (2d Cir. 1994).

jurisdiction over the particular Beverly facility named in the charge, or "consolidate" charges involving separate Beverly facilities (App. 177a, Para. 3), or treat Beverly, its regional subsidiaries, or separate facilities as a "single employer" without a specific single employer allegation (App. 178a, Para. 5), or "stockpile" or "consolidate" charges naming separate Beverly facilities to create a claim for extraordinary nation-wide orders (App. 178a-179a, Para. 7).[2]

The Agreement prescribes charge handling procedures, the non-merit allegations and legal arguments the parties agree to exclude from pleadings, and reserves the General Counsel's option to issue complaints against Beverly that do conform to these agreed upon pre-complaint case handling procedures in those instances where settlement efforts are unsuccessful (App. 178a, Para. 7).

THE AGREEMENT BREACHED

The First Order "Consolidating" Cases

On March 14, 1996, the General Counsel issued a "consolidated" administrative complaint against Beverly that directly and clearly violates the Agreement in virtually ever respect (App. 33a-56a). The wording of the complaint shows the General Counsel once again "stockpiled" charges in the Pittsburgh Regional Office although under the Agreement at least six of the 20 charges should have been filed in either the Baltimore or Philadelphia Regional Offices having geographic jurisdiction over the Beverly facility named in the charge (App.

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[2] In return, Beverly agreed to give up legal contentions that it had raised as defenses to the General Counsel's unprecedented case handling procedures in *Torrington, supra,* and in two other proceedings, pending decision by the Board (App. 178a, Para. 5; App. 179a, Para. 8).

34a-35a, Paras. 2(b), 3(a) & (b)) and complaint issuance determinations made by the Directors in those Offices. The "consolidated" complaints are based upon charges held far beyond "normal case handling" time targets (App. 43a, Paras. 1 and 2) (three months delay) (App. 33a-34a, Paras. 1(a),(c)) (over seven months delay). The administrative complaint names Beverly, it Regional Office, and 20 separate Beverly facilities not as separate facilities as required by the Agreement, but as a "wholly owned subsidiary" *i.e.*, a single employer (App. 35a-36a, Paras 2(a) and (b), 3(a) and (b)). The General Counsel also seeks remedial relief against *all* Beverly Pennsylvania facilities (union and non-union alike), instead of proceeding separately against only those 20 facilities named in specific charges and limiting any relief requested to the particular facility involved (App. 39a, Para. 20, *et seq.*). The "consolidated" cases were set for administrative hearing on May 14, 1996 (App. 40a, 46a, 56a). Thereafter, the General Counsel unilaterally suspended the hearing, but the "consolidated" complaints have *not* been withdrawn. Indeed, on May 2, 1997, (after the Court of Appeals' decision challenged here) the General Counsel reactivated these complaints by setting a hearing date of June 23, 1997.

The Second Order "Consolidating" Cases

On May 9, 1996, the General Counsel issued a Second Order Consolidating Cases and Consolidating Complaints against Beverly and set a hearing date of July 15, 1996 (App.

57a-175a).[3] This 118 page complaint further shows the General Counsel's breach of the Agreement. For example, the language of the complaints: alleges that Beverly and its separate facilities and regional offices are a "single employer" instead of naming only the separate facility as required by the Agreement (App. 64a); "consolidates" 20 separate Pennsylvania facilities in one case instead of treating each facility as a separate entity "on an individual basis" as required by the Agreement (App. 81a-83a, Paras. 2(a)(b)); and seeks extraordinary relief including private property access for union organizers, not just at the separate Pennsylvania facility where a violation may be found, as required by the Agreement and not just Pennsylvania union and non-union facilities, but *all* 600 plus Beverly facilities nation-wide (App. 172a-173a).

STATEMENT OF THE CASE

On March 29, 1996, Beverly filed its breach of contract Complaint (App. 26a-31a). The Complaint invokes federal subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1337(a) (App. 26a). The Complaint seeks specific performance in the form of an injunction, not against any prosecution, but merely to require the General Counsel to adhere to the Agreement by withdrawing the administrative complaints temporarily until the underlying charges are processed through

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[3] The General Counsel attempted to circumvent the Agreement by delaying issuance of this massive complaint until after he terminated the Agreement effective May 6, 1996 (App. 180a, Para. 11). However, all the charges that are the basis for the "consolidated" complaint were filed either on February 13, 1996, or April 4, 1996, and then "stockpiled" in the Pittsburgh Regional Office while the Agreement was in effect (App. 64a-81a, Paras. 1(a), (b), (e), (f), (i), (j), (m), (n), (q), (r), (u), (y), (z), (cc), (dd), (ee), (hh), (kk), (ll), (oo), (pp), (ss), (tt), (ww), (xx), (aaa), (bbb), (eee), (fff), (iii), (jjj), (mmm), (nnn), (qqq), (rrr), (uuu), (vvv), (yyy), (zzz), *et. seq.*).

the case handling procedures required by the Agreement (App. 30a-31a). Beverly also seeks compensatory damages, including fees and costs, and if appropriate, attorney's fees (App. 31a). No relief, temporary or otherwise, is requested from these or any other charges that are processed in conformity with the Agreement (App. 31a).

The District Court denied jurisdiction on the ground that Beverly "does not cite to any provision of the [National Labor Relations] Act prohibiting a complaint to issue. . ." (App. 20a), although the Complaint made no allegation claiming jurisdiction or relief based upon the NLRA. The Court described the Complaint as not one concerning case-handling procedures agreed to by the General Counsel, but "subject matter fully within the *Board's* expertise" (App. 21a, n.2) (emphasis added). And even though the Complaint seeks no relief from administrative complaints that do adhere to the Agreement's pre-complaint conditions, the District Court mistakenly considered the case as challenging the "issuance of a complaint" (App. 22a). Finally, the Court concluded that an "adequate statutory remedy is available" (App. 20a). According to the Court, "adequacy" means Beverly could endlessly litigate its beach of contract Complaint "before an Administrative Law Judge, the Board, and then before a Court of Appeals" (citations omitted) in the very same administrative proceeding alleged to violate the Agreement (App. 19a-20a). The District Court dismissed the Complaint without providing Beverly a requested hearing citing Fed.R.Civ.Pro. 12(b)(1) (App. 16a).

The District Court denied Motions for Stay Pending Appeal and for Reconsideration on July 10, 1996 (App. 23a-25a). Because of the imminence of the July 15, 1996, administrative hearing, Beverly filed a Notice of Appeal on July 3, 1996 (App. 15a). The Court of Appeals denied

Beverly's Emergency Motion for Stay on July 18, 1996 (App. 13a).

The Court of Appeals affirmed the District Court and also misconstrued Beverly's Complaint to be a challenge to "the propriety of the General Counsel's enforcement of the NLRA" (App. 10a), and then interpreted "jurisdictional limitations" in the NLRA to bar direct federal district court review of even a breach of contract suit (App. 8a, 9a). Nothing in the NLRA or its legislative history supports this judicial jurisdictional exemption. The Court of Appeals also considered the NLRA's post-complaint "administrative review scheme" to "effectively" redress Beverly's breach of contract claim although it recognized in another case that administrative exhaustion cannot provide a means of relief where the administrative proceeding itself is allegedly barred by an express contract executed by the same official initiating the administrative proceeding (App. 10a).[4]

REASONS FOR GRANTING THE PETITION

I. Impact Upon Regulated Parties

The Court of Appeal's nullification of contractual property rights through the denial of timely and effective judicial review is of fundamental importance to all parties contracting with the federal government over prosecution whether or not they are parties to this case. As this Court recently recognized in *United States v. Winstar Corp.*, ___ U.S. ___, 116, S.Ct. 2432, 2457 (1996): there are "an enormous variety of contracts" where performance affects a power regulatory or otherwise peculiar to the federal government that can be nullified by multi-tiered federal agency procedures in the modern administrative state. In this period of federal agency budget reduction, it is even

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[4] *Alabama Power Co. v. FERC*, 993 F.2d 1557 (D.C.Cir. 1993).

more likely that federal regulatory and enforcement agencies will expand the number of agreements, like the Agreement in this case, that conserve increasingly restricted personnel ceilings and operating budgets against the background of competing prosecutorial priorities. While there are no available statistical programs that compile the variety and number of these contracts with regulated parties, it cannot be denied that this Court is correct in presuming that the numbers and variety of these contracts are "enormous." Thus, the population of regulated parties who now have agreements with their regulating federal agencies or who will in the future believe they can rely upon these agreements to conserve their own limited financial and human resources is substantial. The writ should issue to insure that these contractual property rights are protected by the timely invocation of federal district jurisdiction as well as to rectify the particular injustice created by the courts below.

II. The Decision Below Conflicts with This Court's Authorities that Uphold the Sanctity of Contract

Last term, this Court upheld the enforceability of "good will" capitalization credits promises made by federal banking regulators in contracts with certain thrift institutions asserted through breach of contract actions. Among other things, the federal government claimed that as a result of post contract Congressional changes negating the use of good will accounting credits, the "good will" contracts interfered with ongoing and future federal government regulation of the thrifts. In *United States v. Winstar Corp., supra*, this Court rejected the Government's argument in an analysis that draws important and controlling parallels that support the contractual validity and timely enforceability of Beverly's breach of contract action.

This Court's analysis begins with the fundamental principle that the government's express "good will" promises to the thrift institutions, like all federal contractual promises, relied upon by promisees are valid "property" rights protected from nullification by the Fifth Amendment. 116 S.Ct. at 2466,n. 43. *See also Lynch v. United States*, 292 U.S. 571,579 (1934) ("Valid contracts [with the United States] are property...protected by the Fifth Amendment (citations omitted)."

This Court then considered the specific text of the "good will" contracts and found that the language of the executed "good will" agreements did not even purport to exempt the thrifts from ongoing federal government initiated regulation. 116 S.Ct. at 2458. Similarly, the thrifts breach of contract action sought no judicial relief against present or future federal regulation but only the "benefit of promises made by the Government. . ." *Id.* Therefore, the federal regulators who had closed two thrifts and denied credits to a third, were accountable in damages for abrogating their promises of allowing use of "good will" credits, because the remedies against the federal government are the same as those "applicable to contracts between private individuals". 116 S.Ct. at 2464-5. *Citing Lynch v. United States, supra*, 292 U. S. at 579. In sum, *Winstar* establishes breach of contract accountability for a class of government promises that implicate neither governmental regulation nor enforcement responsibilities, nor through judicial relief permanently intrude upon these federal prerogatives.

Beverly, as the thrifts in *Winstar*, seeks only to enforce its contract bargain. The words of the Agreement expressly preserve the government's enforcement initiatives in all future Beverly cases in any case not settled during the term of the Agreement (App. 178a). The Complaint also seeks judicial

relief "only (for) the benefit of promises made" by the General Counsel, that are available to private parties (specific performance of the promises made, or if impossible monetary damages)(App. 30a-31a).

The Court of Appeals erred fundamentally by misconstruing Beverly's valuable and enforceable property rights as having no independent significance apart from the General Counsel's prosecutorial authority. In fact, the Agreement here is directly analogous to government contracts that affect but do not foreclose regulatory treatment of the participants in the regulated industry, such as the contract this Court considered and upheld in enforcing valuable property rights in *Winstar*. The Court of Appeals decision denies Beverly this contract right and removes from timely breach of contract accountability a broad category of existing and future government contracts that conserve private party and federal resources through express promises of particular enforcement accommodations with regulated parties. The nullification of contractually created *property* rights where federal governmental regulatory or enforcement authority is unaffected denies Beverly and other contracting parties the very Fifth Amendment protection recently reaffirmed in *Winstar*.

III. The Decision Below Abrogates Beverly's Property Rights Under the Agreement to a Timely Remedy for the General Counsel's Breach

The General Counsel concedes the Agreement is valid. Nor can it be plausibly maintained that the Agreement merely is a statement of general policy, as the courts below would have it, somehow encompassed within the General Counsels' complaint issuance authority. The very wording of the Agreement shows that the parties entered into this Agreement in a mutual "desire to reach an understanding concerning the

resolution of [all pending and new cases]" (App. 177a, Para.3). The Agreement further evidences specific promises by the General Counsel to process charges in new cases as required by paragraphs 3,5, and 7. *Supra* pp. 3-4. This mutual intention creates a contractual *commitment* that is binding upon the General Counsel. *U.S. v. Winstar, supra,* at 2465, n.39; *Sinking Fund Cases*, 99 U.S. 700, 719 (1879)(federal government bound by contractual obligation to the same extent as private parties). This conclusion inevitably follows because it would have been irrational for Beverly to attempt to conserve its limited litigation resources and agree to forego legal arguments only upon an open ended, but precatory, unenforceable statement of policy that offers no protection from exactly the same massive complaints the General Counsel had been issuing since 1986. Restatement (Second) of Contracts § 202 (1)(1981) ("Words and other conduct are interpreted in light of all circumstances, and if the principal purpose of the parties is ascertainable it is given great weight").[5]

The Agreement is intended to create a valuable property right in the promises the General Counsel voluntarily executed. *Lynch v. United States, supra.* Beverly's property right is nullified unless the General Counsel can be held accountable in a neutral Article III court immediately upon his breach rather than at the conclusion of the very administrative procedure that violates the Agreement.

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[5] Indeed, the General Counsel acted under the compulsion of the Agreement by withdrawing a "consolidated" complaint in one instance and transferring the individual charges to the appropriate regional offices for separate facility-by-facility settlement, other resolution or litigation (App. 177a-178a, Para. 4).

Under the controlling precedents of this Court, all who contract with the federal government possess a property right that confers a collateral right to a "speedy," effective, and timely remedy "to materially lessen the injurious effects which would otherwise flow from the nonfulfillment of the contract." *Roehm v. Horst*, 178 U.S. 1, 19, 20 (1900); *Wicker v. Hoppock*, 6 Wall. (73 U.S.) 94, 99 (1867); *Hetzel v. Baltimore & Ohio R.R. Co.*, 169 U.S. 26, 38 (1898). *Accord*: Restatement of Contracts § 329 (1932); U.C.C. § 1-106(1) ("remedies...shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed. . . ."). *See also*, Simpson, *Contracts*, § 195 (2d Ed. West 1965) ("any breach of contract no matter how slight gives the injured party a right of action. . . .").

Unless Beverly can actually obtain a speedy judicial review, it suffers ever increasing injurious effects (and the General Counsel unjustly benefits from) the effective deprivation of the "benefit of Beverly's bargain" to be free during the Agreement's term from precisely the kind of "consolidated" administrative complaints and Draconian orders sought by the General Counsel here during the Agreement's term. As *Winstar* recognizes, the Fifth Amendment property right arising from a contract with the government is as effectively nullified by the denial of government accountability as by the denial of contract validity itself.

IV. The Decision Below Effectively Repeals an Express Congressional Grant of District Court Jurisdiction

The Court of Appeals creates an unjustifiable expansive notion of "the NLRA's jurisdictional limitations" (App. 8a) to deny Beverly a neutral federal judicial forum to hear this breach of contract Complaint. This judicial interpretation finds no textual support in any provision of the NLRA; nor is there

any language in the provisions of 28 U.S. §§ 1331 and 1337(a) that exempts the General Counsel from this grant of federal jurisdiction. Properly construed according to the ordinary and reasonable words used by Congress, the provisions of 28 U.S.C. §§ 1331 and 1337(a) are a plenary grant of federal district court subject matter jurisdiction over breach of federal contract suits where, as here, the federal contract exists and arises from federal law. *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535 (1983) (suit for recovery of tariff payments created by Interstate Commerce Act).[6]

Federal trial courts exercise original jurisdiction over civil actions, including breach of contract suits, that arise under the "Laws of the United States." United States Constitution, Article III § 2. This Constitutional grant of federal question jurisdiction has been codified in Sections 28 U.S.C. §§ 1331 and 1337(a). A complaint is one "arising under federal law" within these jurisdictional provisions whenever the federal claim is a "direct element" of the controversy.

The Office of General Counsel, like other federal enforcement and regulatory agencies, exists exclusively as a creature of federal law – Section 3(d) of the National Labor Relations Act. The only basis for the General Counsel's authority to agree to apply certain case handling procedures in Beverly cases is a delegation from Congress in a statute "regulating commerce within 28 U.S.C. § 1337(a). *Avco Corp.*

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[6] *Accord: MCI Telecommunications Corp. v. Teleconcepts, Inc.*, 71 F.3d 1086, 1093-96 (3d Cir. 1995) *cert. denied*, ___ U.S. ___, 117 S.Ct. 64 (1996) (federal subject matter jurisdiction over private contract to recover payments for service under Federal Communications Act); *Florida East Coast Ry Co. v. Jacksonville Terminal Co.*, 328 F.2d 720, 722 (5th Cir.), *cert. denied*, 379 U.S. 830 (1964) (I.C.C. approval of private contract providing joint railroad terminal ownership confers 28 §§ 1331 and 1337(a) subject matter jurisdiction).

v. Aero Lodge 735, 390 U.S. 557, 561-2 (1968); *Capital Service, Inc. v. NLRB*, 347 U.S. 501, 504 (1954); *A.F. of L. v. Watson*, 327 U.S. 582, 591 (1946). The Agreement itself is wholly the product of federal law, and, therefore, *subject matter* jurisdiction over Beverly's breach of contract complaint lies in the federal trial court under the grant of authority in both 28 U.S.C. §§ 1331 and 1337(a) because the same "arising under federal law" test applies to both sections. *Franchise Tax Bd. v. Laborers Vacation Trust*, 463 U.S. 1, 8 n. 7 (1983).

Beverly's breach of contract claim is a substantial one. During the term of the Agreement, the General Counsel has so far issued and set hearing dates in two massive "consolidated" complaints against Beverly from the same Regional Office. *Supra*, pp. 4-6. The *wording* of certain paragraphs of these complaints shows that the General Counsel's processing of the individual and amended charges in these "consolidated" complaints *prima facie* violates each of the procedures the General Counsel agreed, in writing, to abide by in Beverly cases. *Id.*

The allegations of the Complaint must be accepted as true in reviewing jurisdictional motions granted under Rule 12(b)(1) Fed.R.Civ.Pro. Beverly's allegations more than meet the "arguably plausible claim" standard. Therefore, Beverly's Complaint was properly before the District Court by virtue of the jurisdictional standards expressed in 28 U.S.C. §§ 1331 and 1337(a) and the pleading standards set forth by this Court in *Conley v. Gibson*, 355 U.S. 41, 45-6 (1954) (moving party must show no set of facts support plaintiff's claim).

The specific case handling procedures identified in the Agreement are binding upon the General Counsel not because they are on their face mandatory provisions, but because the General Counsel *agreed* to make them applicable to Beverly cases. The General Counsel, like any other federal official, is

accountable in federal district court, for his contractually created obligations. It is the breach of this bargain that confers subject matter jurisdiction upon the federal district court. Federal courts are vested with a "virtually unflagging obligation" to exercise the jurisdiction given them. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817-18 (1976). The opinion below repeals this constitutional grant of direct jurisdictional accountability, not only in this case, but in all cases where federal officials unilaterally rescind contractual rights relied upon by private parties in any industry subject to federal regulation.

V. The Decision Below Requiring Exhaustion of the NLRA's Protracted Administrative Procedures is Contrary to this Court's Authorities

In *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), this Court reaffirmed its precedents holding that where the rationale for administrative exhaustion is absent, direct judicial review of federal agency action is consistent with the oversight responsibilities residing in the federal judiciary. Where, as here, the breach of contract claim is "wholly collateral" to the judicial review provision of the NLRA, and is quite "outside the agency's expertise," and "particularly" where all meaningful judicial review would be foreclosed, the claim is outside the administrative regulatory structure. 510 U.S. at 212-13. In this case, the General Counsel has inflicted an injury on Beverly for which the law affords a breach of contract remedy apart from the judicial review provisions of the NLRA.

The evidentiary record necessary to determine the merits of this case is now complete, nothing more need be or could be added during an administrative hearing that will enhance judicial review at the end of the NLRA's two tiered administrative proceeding. The sole legal question presented

– the contractual rights and obligations of the parties to the Agreement – is entirely outside the Labor Board's unfair labor practice jurisdiction, and the Labor Board's field of "expertise." This Court has repeatedly denied assertions of exhaustion under the NLRA, as well as other regulatory statutes, where the subject matter of the lawsuit is within the "conventional experience of judges." *International Bhd. of Boilermakers v. Hardeman*, 401 U.S. 233, 238-9 (1971) ("fairness of an internal union disciplinary proceeding" within "conventional experience of judges" not "within the special competence of the NLRB"); *Kaiser Steel Corp. v. Mullins*, 445 U.S. 72, 83-6 (1982) (federal courts, not NLRB, have duty to determine whether a contract violates NLRA); *Nader v. Allegheny Airlines, Inc.*, 426 U.S. 290, 305-6 (1976) (fraudulent misrepresentation claim "within the conventional competence of courts, and the judgment of a technically expert [federal agency] body is not likely to be helpful in the application of these standards to the facts of this case.").

The NLRA's "enforcement scheme" applies exclusively to judicial "review" of Labor Board decisions within delegated adjudicatory power to regulate the practices of collective bargaining. *Leedom v. Kyne*, 358 U.S. 184, 188-189 (1958) (federal district court jurisdiction provides a remedy where lawsuits do not seek "review" within Sections 10(e) and (f) of NLRA). It does not apply to breach of contract suits. The Labor Board has no jurisdiction or "expertise" over alleged breaches of collective bargaining agreements, even when those agreements may violate the substantive provisions of the NLRA. *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957) (federal district courts have subject matter jurisdiction to fashion substantive law in suits alleging resolution of collective bargaining agreements); *NLRB v. Strong Roofing & Insulating Co.*, 393 U.S. 357, 360-61 (1959) (Labor Board has no plenary

authority to administer and enforce collective bargaining agreements"); *Kaiser Steel Corp. v. Mullins, Id.*

The Labor Board has no jurisdiction to compel parties engaged in collective bargaining to agree to any contract terms, (*H.K. Porter Co. v. NLRB*, 397 U.S. 99, 108 (1970)), and has no delegated authority to provide monetary damages or even to construe or enforce promises agreed to by the General Counsel with Beverly or any other contracting party. *McCarthy v. Madigan*, 503 U.S. 140, 156-158 (1992) (concurring opinion).

Beverly's breach of contract action is not a "disguised challenge" to the merits of the General Counsel's unfair labor practice complaints. Beverly seeks no injunction against prosecution unlike Thunder Basis Coal Co. *See* 510 U.S. at 205. Nor is the Complaint a "piecemeal attack" on the agency's administrative process. Here, Beverly's claim is that the General Counsel's refusal to keep his express promise to apply certain case handling procedures that antedate complaint issuance creates an "infirmity [that] is fundamental" to the validity of the entire administrative proceeding. *Assn. of National Advertisers, Inc. v. FTC*, 627 F.2d 1151, 1156 (D.C.Cir. 1979), *cert. denied*, 447 U.S. 921 (1980) (allegation of pre-judgment bias by federal agency officials is a fundamental infirmity to commencement of rule making proceeding); *Amos Treat Co. v. SEC*, 306 F.2d 260, 265 (D.C.Cir. 1962) (*id.* initiation of investigation).[7]

The Court of Appeals for the District of Columbia Circuit earlier recognized and applied these settled principles where "inviolate" contract rights are nullified. In *Alabama Power Co. v. F.E.R.C.*, 993 F.2d 1557 (D.C.Cir. 1993), the Federal Energy

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[7] Prejudgment bias against Beverly is not a remote possibility. *See* 310 NLRB 222 (1993). *In re Murchison*, 349 U.S. 133, 136 (1955).

Regulatory Commission agreed in writing with certain power companies to investigate the propriety of the return-on-equity component of formula rates in three year cycles beginning in 1984, instead of yearly or at the Commission's discretion. The Commission initiated an annual investigation in a year barred by the contract.

The *Alabama Power Co.* Court suggested that litigation expenses incurred directly from an agency's violation of a contractual promise would constitute irreparable injury and properly held that the infringement by the Commission "upon a valuable, bargained-for-right" was directly reviewable *prior* to final agency action because "the contractual right to be unfettered by investigation must remain inviolate." 993 F.2d at 1567. The Court further distinguished cases, such as *Renegotiation Board v. Bannercraft Clothing Co.*, 415 U.S. 1 (1974), because in none "was the agency's initiation of administrative proceedings purportedly prohibited by express contractual agreement between the agency and the party against whom the proceedings were brought." 993 F.2d at 1567.[8] Finally, the Court below agreed that the companies' lost contractual right cannot be cured" by a final agency order that the formula rates are not excessive, and that direct judicial review of the "purely legal question of contract interpretation" did not tread upon F.E.R.C. administrative "territory." *Id.*

Beverly's contractual right to be unfettered from massive administrative complaints is also an "inviolate" contract right. Remedial relief from the burden upon Beverly personnel and

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[8] For the same reason, *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41 (1938) is inapplicable here. *NLRB v. Food & Commercial Workers*, 484 U.S. 112 (1987) is also inapposite. The General Counsel's discretion is controlled by his own Agreement with Beverly, not his statutory discretion to settle non-Beverly cases.

the ever increasing costs of defending the two "massive complaints" is irreparable injury. Meaningful relief can only come *before* the administrative hearings, not after. This prejudicial effect is exacerbated by the NLRA's time-consuming multistage "administrative review scheme" and is another persuasive policy reason upheld by this Court for direct judicial review here. *See Coit Indep. Venture v. FSLIC*, 489 U.S. 561, 588-590 (1989) (mere risk of agency delay justifies prompt state court jurisdiction over claims against insolvent banks); *Gibson v. Berryhill*, 411 U.S. 564, 575, n. 14 (1973) (delay renders administrative proceeding inadequate).

Application of exhaustion here is an unwarranted and irrational expansion of the doctrine beyond its historical and practical warrant. The opinion below converts a neutral primary jurisdiction doctrine into a preemptive strike that nullifies contractual property rights by suffocating those rights in an endless administrative process. Here, this allows the General Counsel to act as if the Agreement is a legal nullity offering only illusory and unenforceable promises.

VI. The Decision Below Draws a Baseless Jurisdictional Distinction Between Federal Agency Actions in Violation of Statutory Mandates and Actions in Violation of Contract

In *Leedom v. Kyne, supra*, this Court ruled that federal agency actions or inactions in violation of mandatory statutory rights owed regulated parties subject to the federal agencies' jurisdiction are directly reviewable in federal district court. This Court rejected the Labor Board's argument that because the National Labor Relations Act was silent as to this grant of jurisdiction, that statute could be read to preclude it. 358 U.S. at 187. Vindication and protection of these statutory rights

were entrusted to the federal judiciary, not to federal agency forbearance.

As this Court has recently guaranteed in *Winstar*, the protection of contractual property rights whenever violated by federal government action is no less important to the contracting parties and to the "Government's own long-run interest as a reliable contracting partner. . . ." 116 S.Ct. at 2459. This Court has long recognized that the general interest of society depends upon a rule of law that upholds and enforces contractual obligations. *Sturgis v. Crowninshield*, 4 Wheat. 122, 197 (1819) (Marshall, C.J.: "obligation of contract [is] the law which binds the parties to perform their agreement"); Corbin, *Contracts*, 1 Vol. Ed., Ch. 1, p. 5 (West 1952) ("[a] contract is a promise or set of promises for the breach of which the law gives a remedy. . . .").

The Court of Appeals offered neither rationale nor precedent for its conclusion that contractual property rights are less entitled to judicial enforcement than statutory rights. In both cases the federal district courts have jurisdiction to ensure that federal agencies abide not only by Congressionally enacted mandates, but also by promises made by federal officials in admittedly valid contracts. The Court of Appeals denial of jurisdiction to federal courts to enforce contractual rights undermines the obligation of contract and deserves review by this Court.

CONCLUSION

For the foregoing reasons, this Court should issue a writ of *certiorari* to the Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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June 2, 1997

APPENDIX

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 15, 1996 Decided December 31, 1996

No. 96-5206

BEVERLY HEALTH AND REHABILITATION SERVICES, INC.,
Appellant

v.

FREDERICK T. FEINSTEIN, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD,
Appellee

Appeal from the United States District Court
for the District of Columbia
(No. 96cv00633)

William H. DuRoss, III argued the cause for appellant, with whom *Hugh L. Reilly* was on the brief.

Nancy E. Kessler Platt, Attorney, National Labor Relations Board, argued the cause for appellee, with whom *Margery E. Lieber,* Assistant General Counsel, and *Eric G.*

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

Moskowitz, Deputy Assistant General Counsel, were on the brief.

Before: WALD, WILLIAMS and TATEL, *Circuit Judges.*

Opinion for the Court filed by *Circuit Judge* WALD.

WALD, *Circuit Judge:* Beverly Health and Rehabilitation Services, Inc. ("Beverly"), a long-term health care company which employs 83,000 people in 33 states and the District of Columbia, brought this action in the district court to enforce a written agreement that it had entered into with the General Counsel of the National Labor Relations Board ("NLRB" or "Board"). The agreement purports to govern procedures for handling multiple unfair labor practice charges filed against Beverly and to restrict the content of complaints issued by the General Counsel that stem from such charges. Through this agreement, Beverly, which operates over 703 individual facilities, hoped to avoid (1) the consolidation of unfair labor practice charges lodged against individual Beverly facilities, (2) the identification of Beverly's various subsidiaries and affiliates as a "single employer," and (3) the imposition of nationwide remedial measures.

During the term of the agreement, the NLRB Director for Region 6, acting under power delegated to him by the General Counsel, issued orders consolidating three unfair labor practice charges against the Grandview Healthcare Canter facility in Oil City, Pennsylvania. The consolidated complaint named Beverly, its Pennsylvania subsidiary, the Grandview facility and 19 other facilities located in Pennsylvania as respondents and sought a remedial order covering all of Beverly's Pennsylvania facilities, "not only the [20] facilities listed in [the complaint]." Beverly responded by filing this action for breach of the written agreement in district court.

After Beverly filed this civil action, the Regional Director postponed indefinitely the administrative hearing on the consolidated complaint and the General Counsel of the NLRB gave ten days notice of his intention to terminate the agreement with Beverly, as permitted by its terms. After the termination of the agreement, the NLRB Director for Region 6 issued a second consolidated complaint. The second complaint incorporated different unfair labor practice charges than those included in the first complaint, although, as with the first complaint, it named Beverly, its Pennsylvania subsidiary and the same 20 Pennsylvania facilities as respondents. The second consolidated compliant also sought remedial measures applying to all Pennsylvania facilities. Beverly did not, however, amend its complaint in the civil action to add allegations concerning the issuance of the second consolidated complaint.

The General Counsel moved to dismiss this civil action, arguing, *inter alia,* that the district court lacked subject matter jurisdiction to entertain a breach of contract claim against the NLRB's General Counsel. The district court agreed, explaining that "a federal district court does not have jurisdiction to enjoin or restrain the Board or its agents from conducting unfair labor practice proceedings," unless "a party can show that the Board or General Counsel has violated a specific mandatory requirement in the National Labor Relations Act." *Beverly Health and Rehabilitation Services, Inc. v. Feinstein,* Civil Action No. 93-633(GK), slip op. at 3, 4 (D.D.C. June 25, 1996). Since the rights asserted by Beverly derived from the written agreement, not the National Labor Relations Act ("NLRA") the district court determined that there was no justification for the court's invading the Board's normal autonomy in bringing and disposing of unfair labor practice cases. The district court explained that "the conduct at issue here is an exercise of prosecutorial discretion, which is not reviewable in this

Court." *Id.* at 5. Accordingly, it dismissed the case, and Beverly brought this appeal. We review the district court's dismissal of Beverly's complaint *de novo*. *Kidwell v. Department of Army, Bd. for Correction of Military Records*, 56 F.3d 279, 283 (D.C. Cir. 1995).

The single narrow issue we address on this appeal is whether the National Labor Relations Act, as amended by the Labor Management Relations Act, 29 U.S.C. § 151 *et seq.*, prevents a district court from exercising subject matter jurisdiction in order to review a charging decision of the General Counsel of the NLRB when that decision is alleged to be in violation of a agreement entered into by the General Counsel. Because the NLRA insulates the General Counsel from judicial review of his prosecutorial functions, we hold that the General Counsel's decision to issue the first consolidated complaint cannot be challenged in a separate civil action to enforce the contract which purportedly limits his discretion in that regard. Accordingly, we affirm the district court's dismissal.

I. ANALYSIS

Enforcement of the NLRA's prohibition against unfair labor practices is accomplished through a split-enforcement system, assigning all prosecutorial functions to the General Counsel of the NLRB and all adjudicatory functions to the Board. *NLRB v. United Food & Commercial Workers Union, Local 23*, 484 U.S. 112, 123-28 (1987). Under the Act, the administrative process begins with the filing by a private party of a "charge." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 138 (1975); *see* 29 U.S.C. §§ 153(d), 160(b). The adjudication of such charges by the Board is predicated upon the issuance by the NLRB's General Counsel of a "complaint" based on the charges. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 138 (1975); *see* 29 U.S.C. §§ 153(d), 160(b). The complaint itself has no legal effect

upon an employer's business, except to impose upon the employer the burden of defending itself in an agency adjudication. 29 U.S.C. § 160(b). The complaint may be disposed of through settlement or formal adjudication before the Board. Once the Board issues a final order, it is appealable to a United States Court of Appeals. *Id.* § 160(f).

Section 153(d) of the NLRA dictates that the General Counsel is the "final authority . . . in respect of the investigation of charges and issuance of complaints . . . and in respect of the prosecution of such complaints before the Board." 29 U.S.C. § 153(d). No provision of the Act provides for judicial review of any of these prosecutorial functions. On the other hand, the Act specifically provides for the judicial review of "final order[s] of the Board." *Id.* § 160(f) (jurisdiction for aggrieved parties to challenge Board orders); *see also id.* § 160(e) (jurisdiction to enforce Board orders).[1] The Supreme Court accordingly has held that the Act does not authorize judicial review of the General Counsel's decision to file or withdraw a complaint. *NLRB v. United Food & Commercial Workers Union, Local 23,* 484 U.S. at 124-26; *id.* at 131 (in "the entire NLRA, judicial review is expressly provided only in respect of Board orders. . . . Congress purposely excluded prosecutorial decisions from this review."); *NLRB v. Sears, Roebuck & Co.,* 421 U.S. at 138; *Vaca v. Sipes,* 386 U.S. 171, 182 (1967).

In this case, the General Counsel issued a complaint consolidating several individual charges and seeking a

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[1] The only provision for district court jurisdiction in the NLRA is section 10(j) of the Act, 29 U.S.C. § 160(j), which provides for the issuance of a temporary injunction in order to prevent the continuation of unfair labor practices from nullifying the effect of any relief ultimately ordered by the Board. *D'Amico v. United States Service Indus., Inc.,* 867 F. Supp 1075 (D.D.C. 1994).

remedy that would apply to the specific Beverly facilities in Pennsylvania where the individual unfair labor practices are alleged to have occurred and to other Beverly facilities in Pennsylvania. Beverly contends that the General Counsel entered into a formal agreement not to pursue such consolidated complaints and not to seek such "extraordinary remedies." Beverly has asked the district court, in effect, to reach down into the administrative process, assess the contents of the first consolidated complaint issued against Beverly's Pennsylvania facilities and, if Beverly is right on the merits of its breach of contract claim, order the General Counsel to "fix" the complaint. Beverly argues that the judicial intervention it seeks does not clash with the protection afforded prosecutorial decisions under the NLRA because the conduct in dispute concerns only "the *contents* of the administrative complaints," not the "issuance of complaints." Appellant's Brief at 13 (emphasis in original). And, even if such decisions are deemed prosecutorial, continues Beverly, the General Counsel's signature on the written agreement underlying this dispute trumps the statutory protection ordinarily accorded to prosecutorial decisions.

We find little merit in Beverly's claim that its civil action would not invade the realm of prosecutorial discretion. A charging determination of the type challenged here is a quintessential example of a prosecutorial decision. It involves a balancing of culpability, evidence, prosecutorial resources, and the public interest. The weighing of all those considerations factors into the issuance of a complaint. The formulation of the proper contours of a complaint is a critical first step in the prosecutorial journey and Beverly's attempt to segregate the framing of the complaint from the enforcement process does not wash. *See Royal Typewriter Co. v. NLRB*, 533 F.2d 1030, 1040 (8th Cir. 1976) ("discretion to frame the issues in an unfair labor practice case rests in the General

Counsel, who occupies a role not unlike that of a prosecutor'').

Beverly's second argument that the written agreement signed by the General Counsel eviscerates the jurisdictional limitation imposed by the NLRA against judicial review of the issuance of a complaint fares no better. Jurisdiction—the power to decide cases—is in the hands of Congress and assigned to agencies and the courts by statute. To determine whether the NLRA's statutory preclusion of judicial review over complaints encompasses Beverly's civil action, we examine whether the Act clearly and convincingly demonstrates that is Congress' intent. *NLRB v. United Food & Commercial Workers Union, Local 23*, 484 U.S. at 131. Because there is no statutory language here expressly precluding review of the General Counsel's charging decision, we look to ''the structure and history of the statute to determine whether the requisite congressional intent to bar judicial review is clearly established.'' *Id.* With substantial help from the Supreme Court, we conclude that the NLRA precludes district court jurisdiction over Beverly's claim.

''The NLRA leaves no doubt that it is meant to be, and is, a comprehensive statute concerning the disposition and review of the merits of unfair labor practice charges. . . . [It] exhaustively sets out the stages through which such charges may pass, from the filing of a complaint, to a Board determination, and to judicial enforcement and review.'' *NLRB v. United Food & Commercial Workers Union, Local 23*, 484 U.S. at 131 (rejecting argument that the Administrative Procedure Act, 5 U.S.C. § 704, provides an alternative route for judicial review of the General Counsel's prosecutorial decisions). The part of the process that is in the hands of the General Counsel is insulated from judicial review in order to protect the incentive for parties to settle and remedy claims of unfair labor practices quickly and expeditiously. *Id.* at 131-32. Judicial review of the issuance of a complaint

is likely to interfere with the proper functioning of the agency and burden the courts. It denies the agency an opportunity to correct its own mistakes and would allow parties to delay the proceedings by instituting collateral litigation. The consequences then "could be most serious. . . . This hazard to the functioning of the 'lifeblood' of the administrative process could certainly not have been the congressional intention." *Id.* at 132. Nor have we found, or has Beverly identified, any portion of the legislative history of the NLRA suggesting that Congress intended an exception to its preclusion of judicial review over the complaint process in these circumstances. Thus, we conclude that the NLRA's protection of prosecutorial decisions is a direct manifestation of Congress' intent to prevent courts from interfering with the General Counsel's exercise of his statutory powers.[2]

The civil action filed by Beverly plainly conflicts with the General Counsel's authority to issue complaints. The fact that the General Counsel's exercise of his statutory powers may violate Beverly's contract rights does not in itself render the NLRA's jurisdictional limitations inapplicable. "[C]ourts decide cases within their jurisdiction rather than asserting jurisdiction because they believe that a substantive claim ought to be considered." *Czerkies v. United States Dep't of Labor*, 73 F.3d 1435, 1447 (7th Cir. 1996) (en

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[2] Our interpretation of the NLRA is consistent with a sensible understanding of when agency action should be subject to review. In this case, all that has occurred and all that has been challenged is the issuance of a complaint. The Act requires that the complaint state the unfair labor practice charges and contain a notice of hearing. 29 U.S.C. § 160(b). The respondent may answer the complaint and present testimony before an administrative law judge to refute the charges. *Id.* The burden of responding to an administrative complaint is not the sort of burden "attending what . . . has been considered to be final agency action" warranting judicial review. *Federal Trade Comm'n v. Standard Oil Co. of Cal.*, 449 U.S. 232, 242 (1980).

banc) (Easterbrook, J., concurring). To hold otherwise would render the jurisdictional limitation meaningless. *Cf. Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 209-12 (1994) (streamlined health and safety enforcement program would be thwarted by judicial review); *Northeast Erectors Ass'n v. Secretary of Labor*, 62 F.3d 37 (1st Cir. 1995) (Occupational Safety and Health Act's comprehensive administrative scheme precludes district court from exercising subject matter jurisdiction over claim that agency enforcement breached oral agreement); *Volges v. Resolution Trust Corp.*, 32 F.3d 50 (2d Cir. 1994) (violation of state contract law did not trigger an exception to the statute prohibiting courts from "restrain[ing] or affect[ing]" the statutory "powers or functions" of the Resolution Trust Corporation), *cert. denied*, 115 S. Ct. 2618 (1995).

Our decision in *Alabama Power Co. v. FERC*, 993 F.2d 1557 (D.C. Cir. 1993), is not to the contrary. In *Alabama Power*, a power company sought to directly appeal to the Court of Appeals a Federal Energy Regulatory Commission ("FERC") order initiating an investigation of the company's rate schedules as violative of a settlement agreement that it had entered into with FERC. FERC does not split prosecution into one entity and adjudication into another and the Federal Power Act provides that "[a]ny party to a proceeding . . . aggrieved *by an order issued by the Commission* in such proceeding may obtain a review of such order in the United States Court of Appeals. . . . " 16 U.S.C. § 825*l*(b) (emphasis added). FERC argued nonetheless that it had yet to issue a final, reviewable order because it was still in the midst of its rate investigation. Thus, the controlling question in *Alabama Power* was whether the investigation order was "final" for purposes of the judicial review provision of the Federal Power Act. We face a different question here—does the statute permit judicial review of a charging decision. Because we find that the NLRA does

not permit a court to review the issuance of a complaint, we reach a different result than in *Alabama Power*.

Of course, it is not the fact that the General Counsel can freely abjure his contractual obligation. His decision to prosecute the alleged violations in a particular manner is effectively reviewed through the ordinary administrative review scheme. As described previously, that scheme delays judicial review until the Board reaches a final disposition of the underlying charges. Delaying judicial review of the prosecution, however, will not "foreclose all meaningful judicial review." *Thunder Basin Coal Co. v. Reich*, 510 U.S. at 212-13 (citing, *inter alia, Heckler v. Ringer*, 466 U.S. 602, 618 (1984)). Beverly's claims directly concern the propriety of the General Counsel's enforcement of the NLRA. "If, indeed, the government has engaged in conduct which should prevent it from enforcing its regulation, there is no reason for the employer not to raise that issue as a defense during . . . the ordinary administrative review procedure. Such a defense would not be so 'wholly collateral' to the [NLRA's] review provisions, nor so outside [the NLRB's] expertise, that it should be exempted from the [NLRA's] review scheme." *Northeast Erectors Ass'n v. Secretary of Labor*, 62 F.2d at 40.

The record of the case initiated by the second consolidated complaint supports our conclusion on this point. The hearing on the second complaint commenced July 15, 1996. Beverly raised the written agreement as an affirmative defense, but, upon the General Counsel's motion, the Administrative Law Judge ("ALJ") struck the defense. Beverly appealed to the NLRB, which reversed the ALJ's ruling and directed the ALJ "to address that defense *on the merits* in his decision to the extent he has not already done so in his order. . . . " *Re: Beverly Health and Rehabilitation Services, Inc.*, Cases 6-CA-27873, *et al.*, Decision on Respondent's Req. for Special Permission to Appeal at 2 (N.L.R.B. Aug. 5, 1996)

(emphasis added). On remand, the General Counsel argued to the ALJ that the agreement does not preclude consolidation of cases according to the terms of the NLRB Case Handling Manual, that those normal case handling principles were applied in formulating the second consolidated complaint, and that the agreement had been terminated before the second consolidated complaint was issued. Appellant's Supplemental Filing, Tr. 62-63. The ALJ ruled that he would exclude the defense "basically for the reasons expressed by the General Counsel and the documents that are already before us on this record, . . . [but] I will revisit the matter in my [written] initial decision." *Id.* at 68. Thus the NLRB fully intends to review the defense on the merits and the Board's decision on the matter will in turn be entitled to judicial review by the Court of Appeals.[3] Beverly will, if necessary, have its day in court on the charging issue, but not today.

II. CONCLUSION

Because the National Labor Relations Act does not permit the district court to exercise jurisdiction over the decision of the General Counsel of the NLRB to issue an unfair labor practice complaint, we affirm the district court's dismissal of this action.

So ordered.

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[3] We express no opinion on whether there may be circumstances where an order of the NLRB directing that an adjudication proceed in the face of a respondent's contract claims would be a final order for purposes of 29 U.S.C. § 160(f).

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1996
96cv00633

No. 96-5206

Beverly Health & Rehabilitation Services, Inc.,
Appellant

v.

Frederick T. Feinstein, General Counsel, National Labor Relations Board,
Appellee

[Stamp—United States Court of Appeals For the District of Columbia Circuit, FILED DEC 31 1996]

ORDER

It is ORDERED, on the court's own motion, that the Clerk withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. Rule 41(a). This instruction to the Clerk is without prejudice to the right of any party at any time to move for expedited issuance of the mandate for good cause shown.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/ Eva Brown
Deputy Clerk/CO

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1995
96cv00633

No. 96-5206

Beverly Health & Rehabilitation Services, Inc.,
Appellant

v.

Frederick T. Feinstein, General Counsel, National Labor Relations Board,
Appellee

[Stamp—United States Court of Appeals for the District of Columbia Circuit, FILED JUL 18 1996, Clerk]

BEFORE: Ginsburg and Sentelle, Circuit Judges.

ORDER

Upon consideration of appellant's emergency motion for stay of mandate pending appeal and for stay of administrative proceeding and to expedite the appeal, and the opposition thereto, it is

ORDERED that the motion for stay be denied. Appellant has failed to satisfy the stringent standards required for a stay pending appeal. *See Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *D.C. Circuit Handbook of Practice and Internal Procedures* 68-69 (1994). It is

FURTHER ORDERED that the following briefing schedule shall apply:

Appellant's brief and appendix	August 28, 1996
Appellee's brief	September 27, 1996
Reply brief	October 11, 1996

The Clerk is directed to calendar the case for oral argument on an appropriate date following completion of briefing.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/ Elizabeth V. Scott
Deputy Clerk/LD

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 1:96CV00633(GK)

BEVERLY HEALTH AND REHABILITATION
SERVICES, INC.
5111 Rogers Avenue
Fort Smith, Arkansas 72919-0155

Plaintiff.

vs.

FREDERICK L. FEINSTEIN, GENERAL COUNSEL,
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, D.C. 20570

Defendant.

NOTICE OF APPEAL

Notice is hereby given this third (3d) day of July, 1996, that BEVERLY HEALTH AND REHABILITATION SERVICES, INC. hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 24th day of June, 1996 in favor of FREDERICK L. FEINSTEIN, GENERAL COUNSEL, NATIONAL LABOR RELATIONSBOARD against said BEVERLY HEALTH AND REHABILITATION SERVICES, INC.

/s/ William H. DuRoss, III
Attorney for
BEVERLY HEALTH AND
REHABILITATION SERVICES, INC.

CLERK: Please mail copies of the above Notice of Appeal to the following at the addresses indicated: See Attachment

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 96-633 (GK)

BEVERLY HEALTH AND REHABILITATION, SERVICES, INC.

Plaintiff,

v.

FREDERICK L. FEINSTEIN, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD

Defendant.

[Stamp—FILED, JUN 25 1996, Clerk,
U.S. District Court, District of Columbia]

ORDER

This matter is before the Court on Defendant's Motion to Dismiss pursuant to Fed. R. Civ. Pro. 12(b)(1) and (6). For the reasons stated in the Court's Memorandum Opinion, it is this 24th day of June, 1996, hereby

ORDERED that Defendant's Motion is granted.

/s/ Gladys Kessler
Gladys Kessler
U.S. District Judge

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Washington, D.C. 20570

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 96-633 (GK)

BEVERLY HEALTH AND REHABILITATION, SERVICES, INC.

Plaintiff,

v.

FREDERICK L. FEINSTEIN, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD

Defendant.

[Stamp—FILED, JUN 25 1996, Clerk,
U.S. District Court, District of Columbia]

MEMORANDUM OPINION

This matter is before the Court on Defendant's Motion to Dismiss pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure. Plaintiff seeks to enjoin the Defendant, the General Counsel of the National Labor Relations Board ("the Board"), from prosecuting a pending administrative unfair labor practice complaint. Plaintiff asks for an injunction because of Defendant's alleged breach of an agreement between Plaintiff and Defendant (the "Agreement") concerning the handling of unfair labor practice complaints against Plaintiff.[1]

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[1] Beginning in 1987, Defendant issued a number of unfair labor practice complaints against Plaintiff and its affiliated entities, alleging various violations of the National Labor Relations Act ("the Labor Act"), 29 U.S.C. § 151 *et seq.* The procedural history of the various complaints from 1987 to the present is complex, *see* Def. Mot. at 2-5; Plt's Opp. at 1-11, and extended discussion is unnecessary for disposition of this motion. Suffice it to say that in March, 1995, as a way of facilitating current and future entanglements between Plaintiff and Defendant, the

I. Facts

On August 4, 1995, Defendant filed an unfair labor practice charge against Plaintiff, which was subsequently amended. The amended charge alleges that Plaintiff unilaterally implemented disciplinary rules designed to intimidate employees at its facilities, and sought to induce employees to resign from union membership or to become objectors, in violation of Sections of 8(a)(1) and (5) of the Labor Act, 29 U.S.C. § 158(a)(1) and (5). On March 14, 1996, the Regional Director of Region 6 of the Board, on behalf of Defendant, issued a complaint and Notice of Hearing against Plaintiff.

Two weeks later, on March 29, 1996, Plaintiff filed this lawsuit, claiming that Defendant had breached the Agreement that governed how complaints would be filed against Plaintiff. Plaintiff seeks to enjoin the General Counsel from bringing the above complaint and to "make separate complaint issuance determinations in the proper Regions;" "reissue Complaints, if warranted, only in conformance with the Agreement;" and "issue any Complaint on new allegations only in conformance with the Agreement." Complaint ¶ 11. Plaintiff also seeks compensatory damages. *Id.*

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parties entered into an agreement that provided, *inter alia*, that the General Counsel would not include allegations in unfair labor practice complaints against Plaintiff which alleged that Plaintiff was a single employer (as was alleged in previous Board complaints), or that "extraordinary" remedies were appropriate. Complaint ¶ 6. The Agreement also stated that new cases would be handled on an individual basis, based upon the facts of the case, in accordance with the Board's normal procedures. *Id.* It is this Agreement — allegedly breached by Defendant — that is the basis of this lawsuit.

II. Discussion

The Labor Act guarantees employees definitive rights in Section 7, 29 U.S.C. § 157, and enforces those rights by making certain employer and union activity unfair labor practices in Section 8, 29 U.S.C. § 158. It also grants the Board, in Section 10, exclusive authority to enforce the foregoing provisions and to prevent "any person" from engaging in unfair labor practices. 29 U.S.C. § 160.

The Board's administrative adjudication of unfair labor practice cases is subject to review only upon the issuance of a final Board order at the conclusion of an unfair labor practice proceeding, and then only in a United States Court of Appeals. 29 U.S.C. §§ 160(e) and (f). *See NLRB v. UFCW, Local 23*, 484 U.S. 112, 118-22 (1987) ("*UFCW*"); *Meyers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 48-51 (1938). It is well settled that a federal district court does not have jurisdiction to enjoin or restrain the Board or its agents from conducting unfair labor practice proceedings. *Meyers*, 303 U.S. at 48; *Armco Steel Corp. v. Ordman*, 414 F.2d 259 (6th Cir. 1969) ("Generally, of course, the United States District Courts do not have jurisdiction to enjoin NLRB proceedings."). *Bokat v. Tidewater Equipment Co.*, 363 F.2d 667, 673 (5th Cir. 1966) (District Court may not "police the procedural purity of the NLRB's proceedings"). As Our Court of Appeals explained in *United Aircraft Corp. v. McCulloh*, 365 F.2d 960 (D.C. Cir. 1969):

> Since *Myers*, the courts have, without exception, ruled that the exclusive review of proceedings involving unfair labor practices abides in the Circuit Courts of Appeals under Section 10(e) and (f) of the National Labor Relations Act, and that interlocutory rulings of the Board in the course of such proceedings may not be considered by federal District Courts.

Id. at 961.

There is one exception to this rule: a district court does have jurisdiction if a party can show that the Board or General Counsel has violated a specific mandatory requirement in the National Labor Relations Act. *Leedom v. Kyne*, 358 U.S. 184, 189 (1958). This is a very narrow exception. The Board or General Counsel must act contrary to an explicit provision of the Act, and the normal means of securing judicial review must be unavailable. *Hartz Mountain Corp. v. Dotson*, 727 F.2d 1308, 1312 (D.C. Cir. 1984). The Supreme Court, as well as our Court of Appeals, has made clear that this exception is rare. *See Boire v. Greyhound*, 376 U.S. 473, 481 (1964); *Hartz*, 727 F.2d at 1312 (''unmistakably clear that the *Kyne* exception is extraordinarily narrow''). To invoke district court jurisdiction under *Kyne*,

> a plaintiff must first be able to identify a specific provision of the Act which, although is 'clear and mandatory', . . . has nevertheless been violated by the Board. That the Board may have made an error or fact or law is insufficient; the Board must have acted without statutory authority.''

Hartz, 727 F.2d at 1312 (quoting *Physicians Nat'l House Staff Ass'n v. Fanning*, 642 F.2d 492, 496 (D.C. Cir. 1980).

Plaintiff does not meet this test. As stated above, Plaintiff's claim is based on alleged violation of the Agreement between the parties, not a particular provision of the Labor Act. Plaintiff does not cite to any provision of the Act prohibiting a complaint to issue in the manner alleged here. Furthermore, an adequate statutory remedy is available. If and when this case reaches the adjudicatory stage, Plaintiff will have ample opportunity to raise any arguments concerning Defendant's breach of the Agreement before an Admin-

istrative Law Judge, the Board, and then before a court of appeals. *See UFCW*, 484 U.S. at 118-122.[2]

The Complaint must also be dismissed because the conduct at issue here is an exercise of prosecutorial discretion, which is not reviewable in this Court. The General Counsel's discretionary authority to issue complaints is codified at Section 3(d) of the Labor Act, which expressly provides that the General Counsel "shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints . . . , and in respect of the prosecution of such complaints before the Board." 29 U.S.C. § 153(d).

The Supreme Court has repeatedly found Section 3(d)'s "final authority" to preclude judicial review. *See UFCW*, 484 U.S. at 130; *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 138, 155 (1975). In *UFCW*, the Court said:

> Subsection 10(f) provides that final decisions "of the Board" shall be judicially reviewable, and, in the context of the entire section, discloses Congress' decision to authorize review of *adjudications*, not of *prosecutions*. Fairly read, this may encompass any Board adjudication resolving an unfair labor practice complaint, whether by final order, consent decree, or settlement. But it plainly cannot be read to provide for judicial review of the General Counsel's prosecutorial function.

484 U.S. at 129.

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[2] Plaintiff's attempt to frame this case as a simple contract dispute having little to do with the expertise of the Board, *see* Plt. Opp. at 18-19, is unpersuasive. Plaintiff complains that the General Counsel breached the agreement by, among other things, failing to handle cases according to "normal case handling procedures," consolidating cases, making single employer allegations, delaying processing of charges, and "stockpiling" charges. *See* Plt. Opp. at 9-11. Such issues involve the day-to-day handling of unfair labor practices cases, a subject matter fully within the Board's expertise.

The General Counsel's conduct at issue in this case — issuance of a complaint — is clearly a prosecutorial decision. *See id.* at 125 ("Some agency decisions can be said with certainty to fall on one side or the other of this line. For example, . . . decisions whether to file a complaint are prosecutorial."). That Beverly complains that issuance of the complaint violates the Agreement between the parties does not alter the prosecutorial nature of the decision. Accordingly, judicial review of the decision is precluded by statute.

Plaintiff has failed to demonstrate that this Court should depart from the well established rule that "exclusive review of proceedings involving unfair labor practices abides in the Circuit Courts of Appeals." *United Aircraft*, 365 F.2d at 961.

Therefore, it is this 24th day of June, 1996 hereby ORDERED that Defendant's Motion to Dismiss is **granted** pursuant to Fed. R. Civ. P. 12(b)(1). An Order will issue with this opinion.

/s/ Gladys Kessler
Gladys Kessler
U.S. District Judge

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 96-633 (GK)

BEVERLY HEALTH AND REHABILITATION, SERVICES, INC.

Plaintiff,

v.

FREDERICK L. FEINSTEIN, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD

Defendant.

[Stamp—FILED, JUL 10 1996, Clerk,
U.S. District Court, District of Columbia]

ORDER

This matter is before the Court on Defendant's Motion for Stay Pending Appeal and Administrative Proceeding and Defendant's Motion for Reconsideration of the Court's June 24, 1996 Order dismissing Plaintiff's case pursuant to Fed. R. Civ. P. 12(b)(1).

Under the Federal Rules, a district court may grant a stay pending appeal if the applicant shows (1) it is likely to succeed on the merits; (2) it will be irreparably harmed if a stay is not granted; (3) a stay will not cause any injury to other parties interested in the lawsuit; and (4) the stay furthers the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (1958). In this case, Plaintiff fails to meet this burden.

The Court does not believe that Plaintiff is likely to succeed on appeal. As the Court explained in its June 24, 1996 Memorandum Opinion, *see* Mem. Op. at 5-6, the General Counsel's conduct at issue in this case — issuance

of a complaint — is a prosecutorial decision which is not reviewable in this Court. *NLRB v. UFCW, Local 23*, 484 U.S. 112, 129 (1987) (Act "plainly cannot be read to provide for judicial review of the General Counsel's prosecutorial function"). Plaintiff has offered no new arguments to rebut this point.

Moreover, Plaintiff will not be irreparably harmed if the stay is not granted. It is well settled that defending against an administrative proceeding is not the kind of irreparable harm that supports a grant of injunctive relief. *Renegotiation Board v. Bannercraft Clothing Co., Inc.*, 415 U.S. 1, 24 (1974) ("Mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury."); *Sears Roebuck & Co. v. NLRB*, 473 F.2d 91, 93 (D.C. Cir. 1972) ("Irreparable harm cannot be established by a mere reliance on the burden of submitting to agency hearings. This is a risk of litigation that is inherent in society and not the type of injury to justify judicial intervention."); *Cities of Anaheim & Riverside, Cal. v. F.E.R.C.*, 692 F.2d 773, 779 (D.C. Cir. 1982) (same).

Plaintiff also fails to show that the General Counsel will not be harmed by the issuance of a stay. Plaintiff asserts that a stay "will not delay in any way" the administrative proceeding. Plt. Mot. at 5. This contention is doubtful given that a postponement of the administrative proceeding is precisely what Plaintiff seeks. And a stay of the proceeding undoubtedly impairs the General Counsel's ability to effectively and vigorously carry out its statutory obligations.

Finally, the Board undoubtedly acts in the public interest. *NLRB v. Vibra Screw Inc.*, 904 F.2d 874, 876 (3d Cir. 1990) (the Board does not act "in the interest of those employees who have allegedly been the victims of unfair labor practices, but in the public interest"); *U.S. Contractors Inc., v. NLRB*, 697 F.2d 692, 695 (5th Cir. 1983)

(Board acts in public interest by enforcing public, not private rights). The Board's actions in the public interest will be greatly hindered by any delay caused by issuance of a stay.

For these reasons, it is this 10th day of July, 1996, hereby

ORDERED that Plaintiff's Motion for Stay Pending Appeal and Administrative Proceeding is **denied**; and it is further

ORDERED that Plaintiff's Motion for Reconsideration is **denied** for the reasons discussed in the Court's June 24, 1996, Order.

/s/ Gladys Kessler
Gladys Kessler
U.S. District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASE NUMBER 1:96CV00633
JUDGE: Gladys Kessler
DECK TYPE: Civil General
DATE STAMP: 03/29/96

BEVERLY HEALTH AND REHABILITATION SERVICES, INC.
5111 Rogers Avenue
Fort Smith, AR 72919-0155,

Plaintiff,

v.

FREDERICK L. FEINSTEIN, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, D.C. 20570,

Defendant.

COMPLAINT
(Contract Enforcement)

FACTS

1. The subject matter of this Complaint is the enforcement of an Agreement entered under authority of the National Labor Relations Act (''NLRA''), 29 U.S.C. section 141. The NLRA is a Federal statute, and therefore this Court has jurisdiction under:

A. 28 U.S.C. Section 1331, in that the action arises under the laws of the United States; and

B. 28 U.S.C. Section 1337(a), in that the action arises under an Act of Congress regulating commerce.

PARTIES

2. The parties to this action are Beverly Health and Rehabilitation Services, Inc. (''Beverly''), Plaintiff, and the General Counsel of the National Labor Relations Board (''General Counsel''), Defendant.

3. Beverly is a California corporation which provides nursing home health care services nationwide which is qualified to do business in the District of Columbia and Pennsylvania, among other states, and is an ''employer'' as defined in Section 2(2) of the NLRA, 29 U.S.C. Section 152(s).

4. The General Counsel is the General Counsel of the National Labor Relations Board (''NLRB'') exercising authority pursuant to Section 3(d) of the NLRA, 29 U.S.C. Section 153(d).

FACTS

5. On March 22, 1995, because of disagreements between the parties concerning the proper procedures to be employed in processing unfair labor practice allegations filed against Beverly under the NLRA, Beverly and the General Counsel entered what is called a ''standstill agreement'' (herein ''Agreement''). (Hereinafter, where appropriate, Beverly and the General Counsel shall respectively be referred to as a ''Party,'' and together be referred to as ''Parties'' to the Agreement.)

6. In pertinent part, the Agreement provides that:

A. Allegations filed subsequent to the Agreement's execution on March 25, 1995, called ''Other Cases,'' ''will be handled by the appropriate Regional Office of the Board, individually and on a case-by-case, based on the facts of the particular case, in accordance with the Board's normal procedures for handling and settling unfair labor practice

cases.***Notwithstanding the foregoing, cases may be consolidated, in accordance with the Board's normal procedures concerning consolidation of cases, where consolidation is deemed appropriate for reasons unrelated to the single employer issues litigated or the remedies being sought [in then pending cases], such as for reasons of efficiency or convenience of counsel or witnesses."

B. "For the duration of this Agreement . . . General Counsel will not include allegations in unfair labor practice complaints against Beverly which allege Beverly is a single employer . . . or that "extraordinary" remedies are appropriate."

C. "[T]he General Counsel, for the duration of this Agreement, will seek remedial relief (including notice posting and a cease and desist order) that will apply to the individual nursing home(s) at which the unfair labor practices allegedly occurred."

D. [i]t shall be effective until revoked by either party upon thirty days notice to the other party, and neither party has done so to date.

7. Notwithstanding the provisions of the Agreement set forth in subparagraphs A-D of paragraph 6, *supra,* the General Counsel, on March 14, 1996, issued a Complaint against "Beverly Health and Rehabilitation Services, Inc., and its wholly owned subsidiary, Beverly Enterprises-Pennsylvania, Inc., and its Pennsylvania Facilities," Case 6-CA-27453, which does not handle cases "on an individual basis," but, instead, lists twenty Pennsylvania nursing homes that are alleged to be "wholly owned subsidiary and individual facilities" of Beverly "providing in-patient medical and professional care and services for the elderly, sick and infirm" where it is alleged that:

Beverly has promulgated and maintained

> Rule 1.4 "Refusing to cooperate in the investigation of any allegation of patient (resident) neglect or abuse or any other alleged violation of company rules, laws or governmental regulations.
>
> Rule 1.6 "Making false or misleading work-related statements concerning the company, the facility or fellow associates.

and that

> Beverly sent letters to employees . . . providing information on how to obtain objector status under *CWA v. Beck,* 487 U.S. 735 (1988) and advising employees on how to obtain *Beck* information.

The Complaint alleges that Beverly's actions described in the points just described in the instant paragraph violate employees' rights under the NLRA.

8. As purported relief for the violations alleged, the General Counsel seeks, *inter alia,* "an Order requiring respondent to rescind the rules at all of its Pennsylvania facilities, not only the facilities listed herein," including those where there is no "exclusive representative."

9. The General Counsel makes the allegations of the Complaint described in paragraph 7 herein, and seeks the Order described in paragraph 8 herein, notwithstanding the provisions of the Agreement described in paragraph 5 herein, and the following additional facts known or which should be known to the General Counsel:

A. of the 20 facilities listed in the General Counsel's Complaint, Beverly operates only six and Beverly Enterprises-Pennsylvania, Inc., operates 14;

B. Service Employees International Union (the Charging Party on the Charges resulting in the General Counsel's

Complaint) is not the "exclusive representative," under Section 9(a) of the NLRA, 29 U.S.C. Section 159(a), for a single employee at any of the 20 listed facilities;

C. SEIU Local 585 is the "exclusive representative" for "employees," as defined in the NLRA, at five of the listed facilities;

D. SEIU Local 688 is the "exclusive representative" for employees at four of the listed facilities;

E. SEIU Local 1199P is the "exclusive representative" for employees at 11 of the listed facilities;

F. each of the listed facilities has a separate (expired) collective bargaining agreement with the appropriate "exclusive representative" (one of the three Locals); and

G. each "exclusive representative" represents an individual facility's employees pursuant to a separate NLRB certification.

10. The General Counsel has set a hearing upon Complaint containing these amalgamated allegations for May 14, 1996, at the Venango County Courthouse, Liberty Street, Franklin, Pennsylvania, a location distant from and inconvenient to many of the listed facilities.

CLAIM FOR RELIEF

11. The allegations of the Complaint described in the above paragraphs establish that from and nature of the General Counsel's Complaint, the relief sought therein, and the hearing location identified therein all violate the Agreement.

RELIEF SOUGHT

As relief for the violations of the Agreement alleged, Beverly respectfully requests an Order granting specific performance of the Agreement, including:

1. an injunction which requires the General Counsel to:

   A. withdraw the Complaint and vacate the Notice of Hearing;

   B. make separate complaint issuance determinations in the proper Regions;

   C. reissue Complaints, if warranted, on allegations only in conformance with the Agreement; and

   D. issue any Complaint on new allegations only in conformance with the Agreement.

2. compensatory damages, including fees and costs, and, if the Court determines them to be appropriate, attorneys' fees.

3. Such other and further relief as the Court may deem appropriate to the circumstances.

Respectfully submitted,

/s/ William H. DuRoss, III
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COUNSEL FOR PLAINTIFF

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1996
96cv00633

No. 96-5206

Beverly Health and Rehabilitation Services, Inc.,
Appellant

v.

Frederick L. Feinstein, General Counsel, National Labor Relations Board,
Appellee

[Stamp—United States Court of Appeals for the District of Columbia, FILED MAR 4 1997, Clerk]

BEFORE: Edwards, Chief Judge; Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers and Tatel, Circuit Judges.

ORDER

Upon consideration of appellant's Suggestion for Rehearing *In Banc*, and the absence of a request by any member of the court for a vote, it is

ORDERED that the suggestion be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/ Robert A. Bonner
Robert A. Bonner
Deputy Clerk

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

Case 6-CA-27453

BEVERLY HEALTH AND REHABILITATION SERVICES, INC. AND ITS WHOLLY-OWNED SUBSIDIARY, BEVERLY ENTERPRISES - PENNSYLVANIA, INC. AND ITS PENNSYLVANIA FACILITIES

and

SERVICE EMPLOYEES INTERNATIONAL UNION FOR ITS LOCALS 585, 668 AND DISTRICT 1199P, AFL-CIO, CLC

COMPLAINT AND NOTICE OF HEARING

Service Employees International Union, AFL-CIO, CLC for its Locals 585, 668 and District 1199P, herein respectively called the International, Local 585, Local 668 and District 1199P, and hereinafter collectively called the Union or Charging Party, has charged that Beverly Health and Rehabilitation Services, Inc., herein called by its correct name, Beverly Health and Rehabilitation Services, Inc. and its wholly owned subsidiary, Beverly Enterprises - Pennsylvania, Inc. and its Pennsylvania facilities, and hereinafter called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq., herein called the Act. Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in this proceeding was filed by the Union on August 4, 1995, and a copy was served by certified mail on Respondent on August 4, 1995.

(b) The first amended charge in this proceeding was filed by the Union on August 21, 1995, and a copy was served by certified mail on Respondent on August 21, 1995.

(c) The second amended charge in this proceeding was filed by the Union on March 1, 1996, and a copy was served by certified mail on Respondent on March 5, 1996.

2. (a) At all material times, Respondent, a corporation with a regional office formerly located in Camp Hill, Pennsylvania, and presently located in Leesburg, Virginia, which region includes a number of wholly owned subsidiaries, including Beverly Enterprises - Pennsylvania, Inc., which operates more than twenty individual nursing homes throughout the Commonwealth of Pennsylvania, has been engaged both directly and through its regional office, wholly owned subsidiaries and individual facilities as a health care institution in the operation of nursing homes providing inpatient medical and professional care and services for the elderly, sick and infirm.

(b) At all material times herein, Respondent, directly or through its regional office, wholly owned subsidiary and individual facilities, has been engaged as a health care institution, in the operation of nursing homes providing inpatient medical and professional care and services for the elderly, sick and infirm at, among others, the following facilities:

1) Meadville Care Center, Meadville, Pennsylvania;

2) Haida Manor, Hastings, Pennsylvania;

3) Franklin Care Center, Waynesburg, Pennsylvania;

4) Murray Manor Convalescent Center, Murrysville, Pennsylvania;

5) Grandview Health Care Center, Oil City, Pennsylvania;

6) Caledonia Manor, Fayetteville, Pennsylvania;

7) Duke Convalescent Center, Lancaster, Pennsylvania;

8) Blue Ridge Haven Convalescent Center - West, Camp Hill, Pennsylvania.

9) Camp Hill Care Center, Camp Hill, Pennsylvania;

10) Beverly Manor of Monroeville, Monroeville, Pennsylvania;

11) Beverly Manor of Reading, Mt. Penn, Pennsylvania;

12) Carpenter Care Center, Tunkhannock, Pennsylvania;

13) Clarion Care Center, Clarion, Pennsylvania;

14) Fayette Health Care Center, Uniontown, Pennsylvania;

15) Meyersdale Manor, Meyersdale, Pennsylvania;

16) Mt. Lebanon Manor Convalescent Center, Pittsburgh, Pennsylvania

17) Richland Manor, Johnstown, Pennsylvania;

18) Stroud Manor, Stroudsburg, Pennsylvania;

19) William Penn Nursing Center, Lewistown, Pennsylvania;

20) York Terrace Nursing Center, Pottsville, Pennsylvania.

3. (a) During the 12-month period ending July 31, 1995, Respondent, by and through its regional office, wholly owned subsidiary and individual facilities, and in conducting its business operations described above in paragraph 2, derived gross revenues in excess of $100,000.

(b) During the 12-month period ending August 31, 1995, Respondent, by and through its regional office, wholly owned subsidiary and its individual facilities, and in con-

ducting its business operations described above in paragraph 2, purchased and received at its various facilities described above in paragraph 2, goods valued in excess of $5,000 directly from points outside the Commonwealth of Pennsylvania.

4. At all material times, Respondent has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

5. (a) At all material times, Service Employees International Union, AFL-CIO, CLC has been a labor organization within the meaning of Section 2(5) of the act.

(b) At all material times, Service Employees International Union, Local 585, AFL-CIO, CLC has been a labor organization within the meaning of Section 2(5) of the Act.

(c) At all material times, Service Employees International Union, Local 668, AFL-CIO, CLC has been a labor organization within the meaning of Section 2(5) of the Act.

(d) At all material times, District 1199P, Service Employees International Union, AFL-CIO, CLC has been a labor organization within the meaning of Section 2(5) of the Act.

6. On about June 1, 1995, Respondent promulgated and since then has maintained the following revised overly-broad disciplinary rules under which employees are subject to suspension, pending investigation for discharge, at Respondent's Pennsylvania facilities, including but not limited to those facilities listed above in paragraph 2(b):

(a) *Rule 1.4*: Refusing to cooperate in the investigation of any allegation of patient (resident) neglect or abuse or any other alleged violation of company rules, laws or government regulations.

(b) *Rule 1.6*: Making false or misleading work-related statements concerning the company, the facility or fellow associates.

7. In or about January 1995, through June 1995, the exact dates being unknown to General Counsel but within the knowledge of the Respondent, Respondent, at the facilities listed above in paragraph 2(b), sent letters to employees employed at those facilities near or after the end of the term of the existing collective-bargaining agreements with the Union at each of the aforementioned facilities, providing information on how to obtain objector status under *CWA v. Beck*, 487 U.S. 735 (1988) and advising employees on how to obtain *Beck* financial information.

8. Respondent, by engaging in the conduct set forth above in paragraph 7, encouraged its employees to obtain *Beck* objector status.

9. The following employees of Respondent, at its facility called Grandview Health Care Center located in Oil City, Pennsylvania, herein called the Grandview Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and part-time service and maintenance associates including nursing assistants, housekeepers, dietary aides, cooks, laundry aides, unit clerk, floor maintenance and activity aides employed by the Employer at its 1293 Grandview Road, Oil City, Pennsylvania, facility; excluding all other associates including professional associates, office clerical, management associates, central supply clerk, casual and temporary associates, guards and supervisors as defined in the National Labor Relations Act.

10. At all material times, Local 585 has been the designated exclusive collective-bargaining representative of the

Grandview Unit and has been recognized as such representative by Respondent. Such recognition has been embodied in a collective-bargaining agreement which was effective by its terms from March 30, 1992 to December 31, 1994.

11. At all material times, Local 585, by virtue of Section 9(a) of the Act has been, and is, the exclusive collective-bargaining representative of the Grandview Unit.

12. The following employees of Respondent, at its facility called Duke Convalescent Center located in Lancaster, Pennsylvania, herein called the Duke Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and part-time service and maintenance associates including nursing assistants, housekeepers, floor care workers, dietary aides, cooks, laundry aides, physical therapy aides, activity aides and unit secretaries employed by the Employer at its 425 North Duke St., Lancaster, Pennsylvania, facility; excluding all other associates including professional associates, office clerical associates, management associates, central supply clerk, guards and supervisors as defined in the National Labor Relations Act.

13. At all material times, Local 668 has been the designated exclusive collective-bargaining representative of the Duke Unit and has been recognized as such representative by Respondent. Such recognition has been embodied in a collective-bargaining agreement which was effective by its terms from December 20, 1991 to December 31, 1994.

14. At all material times, Local 668, by virtue of Section 9(a) of the Act has been, and is, the exclusive collective-bargaining representative of the Duke Unit.

15. On about June 1, 1995, Respondent implemented revised disciplinary rules for employees in the Grandview Unit and the Duke Unit.

16. The subject set forth in paragraph 15 relates to wages, hours and other terms and conditions of employment of the Grandview and the Duke Units and is a mandatory subject for the purposes of collective bargaining.

17. Respondent engaged in the conduct described above in paragraph 15 unilaterally and without affording Local 585 and/or Local 668 an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

18. By the conduct described above in paragraphs 6, 7 and 8, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

19. By the conduct described above in paragraphs 15 and 17, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

20. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph 6, 7, 8, 15 and 17, the General Counsel seeks an Order requiring that Respondent promptly rescind the rules described herein in paragraph 6(a) and (b) at all of its Pennsylvania facilities, not only the facilities listed herein in paragraph 2(b), to expunge the records of any employees at Respondent's Pennsylvania facilities who were disciplined under either of the two rules, and to make those employees whole for any losses of employment,

of earnings, or of other benefits they suffered as a result of this discipline. The General counsel further seeks an Order requiring that Respondent rescind the revised set of disciplinary rules at its Duke and Grandview facilities, to expunge the records of any employees at those facilities who were disciplined under the revised rules, and to make those employees whole for any losses of employment, of earnings, or of other benefits they suffered as a result of discipline issued to them under the revised rules. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

PLEASE TAKE NOTICE that commencing at 10 a.m. on the 14th day of May 1996, and on consecutive days thereafter, a hearing will be conducted in the Venango County Courthouse, Liberty Street, Franklin, Pennsylvania, before an administrative law judge of the Board on the allegations in this complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

Respondent is further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an answer to this complaint within 14 days from the service of it, and that, unless Respondent does so, all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board. Respondent is also notified that pursuant to the Board's Rules and Regulations, Respondent shall serve a copy of its answer on each of the other parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor

Practice Proceedings Pursuant to Section 10 of the National Labor Relations Act, As Amended, are attached.

Dated at Pittsburgh, Pennsylvania, this 14th day of March 1996.

/s/ Gerald Kobell
Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
1000 Liberty Avenue - Room 1501
Pittsburgh, Pennsylvania 15222

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

Cases 6-CA-27342 and 6-CA-28581

BEVERLY HEALTH AND REHABILITATION SERVICES, INC. AND ITS WHOLLY OWNED SUBSIDIARY, BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a GRANDVIEW HEALTH CARE CENTER

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 585, AFL-CIO, CLC

ORDER CONSOLIDATING CASES, CONSOLIDATED AMENDED COMPLAINT AND NOTICE OF HEARING AND ORDER RESCHEDULING HEARING IN CASE 6-CA-27581

Upon a charged filed on September 15, 1995, by Service Employees International Union, Local 585, AFL-CIO, CLC, herein called the Union or Charging Party, a Complaint and Notice of Hearing issued in Case 6-CA-27581 on November 21, 1995, against Beverly Health and Rehabilitation Services, Inc. d/b/a Grandview Health Care Center, herein called by its correct name Beverly Health and Rehabilitation Services, Inc. and its wholly owned subsidiary, Beverly Enterprises - Pennsylvania, Inc. d/b/a Grandview Health Care Center, and hereinafter called Respondent, and the Union in Case 6-CA-27342 has charged that Respondent has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Sections 102.15 and 102.17 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Amended Complaint and Notice of Hearing and Order Rescheduling Hearing in Case 6-CA-27581 and alleges as follows:

1. The charge in Case 6-CA-27342 was filed by the Union on June 21, 1995, and a copy was served by certified mail on Respondent on June 22, 1995.

2. The charge in Case 6-CA-27581 was filed by the Union on September 25, 1995, and a copy was served by certified mail on Respondent on September 26, 1995.

3. At all material times, Respondent, a corporation with offices and places of business located throughout the United States, including a facility located in Oil City, Pennsylvania, herein called Respondent's facility, has been engaged as a health care institution in the operation of a nursing home providing in-patient medical and professional care and services for the elderly, sick and infirm.

4. (a) During the 12-month period ending May 31, 1995, Respondent, in conducting its business operations described above in paragraph 3, derived gross revenues in excess of $100,000.

(b) During the 12-month period ending May 31, 1995, Respondent, in conducting its business operations described above in paragraph 3, purchased and received at its Oil City, Pennsylvania, facility goods valued in excess of $5,000 directly from points outside the Commonwealth of Pennsylvania.

5. At all material times, Respondent has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of

the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

6. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

7. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Tamara Montell	–	Administrator
Donna Puleo	–	RN Supervisor
Angela Huffman	–	Director of Nursing
Theresa Stack	–	Assistant Director of Nursing
Jackie Shaffer	–	Assistant Administrator

8. About August 4, 1995, Respondent issued a two-week suspension without pay to its employee Oneita Jane Say.

9. Respondent engaged in the conduct described above in paragraph 8 because the employee named therein supported or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

10. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and part-time service and maintenance associates including nursing assistants, housekeepers, dietary aides, cooks, laundry aides, unit clerk, floor maintenance and activity aides employed by the Employer at its 1293 Grandview Road, Oil City, Pennsylvania, facility; excluding all other associates including professional associates, office clerical, management associates, central supply clerk, casual and temporary

associates, guards and supervisors as defined in the National Labor Relations Act.

11. At all material times, the Union has been the designated exclusive collective-bargaining representative of the Unit and has been recognized as such representative by Respondent. Such recognition was embodied in a collective-bargaining agreement which was effective by its terms from March 30, 1992 to December 31, 1994.

12. At all material times, the Union, by virtue of Section 9(a) of the Act has been, and is, the exclusive collective-bargaining representative of the Unit.

13. On about May 25, 1995, Respondent reduced the working hours and modified the work schedules of employees in the Unit.

14. On about June 1, 1995, Respondent implemented revised disciplinary rules for employees in the Unit.

15. The subjects set forth in paragraphs 13 and 14 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

16. Respondent engaged in the conduct described above in paragraphs 13 and 14 unilaterally and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

17. By the conduct described above in paragraphs 8 and 9, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

18. By the conduct described above in paragraphs 13, 14 and 16, Respondent has been failing and refusing to bargain

collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

19. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

IT IS HEREBY ORDERED that the hearing in Case 6-CA-27581, previously postponed indefinitely, is hereby rescheduled for 10 a.m. on the 14th day of May 1996, at the Venango County Courthouse, Liberty Street, Franklin, Pennsylvania.

PLEASE TAKE NOTICE that commencing at 10 a.m. on the 14th day of May 1996, and on consecutive days thereafter, a hearing will be conducted in the Venango County Courthouse, Liberty Street, Franklin, Pennsylvania, before an administrative law judge of the Board on the allegations in this consolidated amended complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

Respondent is further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an answer to this consolidated amended complaint within 14 days from the service of it, and that, unless Respondent does so, all the allegations in the consolidated amended complaint shall be considered to be admitted to be true and shall be so found by the Board. Respondent is also notified that pursuant to the Board's Rules and Regulations, Respondent shall serve a copy of its answer on each of the other parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held

Before the National Labor Relations Board in Unfair Labor Practice Proceedings Pursuant to Section 10 of the National Labor Relations Act, As Amended, are attached.

Dated at Pittsburgh, Pennsylvania, this 14th day of March 1996.

/s/ Gerald Kobell
Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
1000 Liberty Avenue - Room 1501
Pittsburgh, Pennsylvania 15222

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case: 6-CA-27342, 6-CA-27581, 6-CA-27453

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail;***

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; ***and***

(5) copies must be simultaneously served on all other parties *(listed below)*, and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Hugh L. Reilly, Esquire
Beverly Health and Rehabilitation Services,
Inc.
5111 Rogers Ave.
Fort Smith, AR 72919

Beverly Health and Rehabilitation Services,
Inc. and its Wholly Owned Subsidiary
Beverly Enterprises - Pennsylvania, Inc.
d/b/a Grandview Health Care Center
1293 Grandview Road
Oil City, PA 16301

Beverly Health and Rehabilitation Services,
Inc. and its Wholly Owned Subsidiary
Beverly Enterprises - Pennsylvania, Inc.
602 South King Street, Suite 300
Leesburg, VA 22075

Stephen Jordan, Esquire
Rothman, Gordon, Foreman & Groudine, P.C.
3rd Floor, Grant Bldg.
Pittsburgh, PA 15219

Jonathan P. Hiatt, General Counsel
Service Employees International Union,
AFL-CIO, CLC
1313 L. Street, N.W.
Washington, DC 20005

Ronald A. Berlin, Esquire
Berlin, Boas & Isaacson
500 Law and Finance Bldg.
Pittsburgh, PA 15219

Service Employees International Union,
Local 585, AFL-CIO, CLC
237 Sixth Street
Pittsburgh, PA 15238

Service Employees International Union,
Local 668, AFL-CIO, CLC
1037 McClay Street
Harrisburg, PA 17103

District 1199P, Service Employees
International Union, AFL-CIO, CLC
1402 S. Atherton Street
State College, PA 16801

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Arlington, VA; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the

parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are of-

fered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

Any party shall be entitled, on request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8-1/2 by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Arlington, VA. *(or, in cases under the San Francisco, California branch office, the Deputy Chief Administrative Law Judge; or in cases under the branch offices in New York, New York, and Atlanta, Georgia, the Associate Chief Administrative Law Judge)* at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such

extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge, Deputy Chief Administrative Law Judge, or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations; particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

Cases 6-CA-27342 and 6-CA-27581

BEVERLY HEALTH AND REHABILITATION SERVICES, INC. AND ITS WHOLLY OWNED SUBSIDIARY, BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a GRANDVIEW HEALTH CARE CENTER

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 585, AFL-CIO, CLC

Case 6-CA-27453

BEVERLY HEALTH AND REHABILITATION SERVICES, INC. AND ITS WHOLLY OWNED SUBSIDIARY, BEVERLY ENTERPRISES - PENNSYLVANIA, INC. AND ITS PENNSYLVANIA FACILITIES

and

SERVICE EMPLOYEES INTERNATIONAL UNION FOR ITS LOCALS 585, 668 AND DISTRICT 1199P, AFL-CIO, CLC

ORDER FURTHER CONSOLIDATING CASES

Charges, pursuant to Section 10(b) of the National Labor Relations Act, as amended, 29 U.S.C. Section 151, et seq., and Section 102.9 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, having been duly filed in the above-captioned cases, a Complaint and Notice of Hearing having issued in Case 6-CA-27581 on November 21, 1995, and the undersigned having duly considered the matter and deeming it necessary in order to

effectuate the purposes of the Act, and to avoid unnecessary cost or delay,

IT IS HEREBY ORDERED, pursuant to Section 102.33(a)(2) of the Board's Rules and Regulations, that Case 6-CA-27453 be, and it hereby is, consolidated with Cases 6-CA-27342 and 6-CA-27581, which have been consolidated together in a Consolidated Amended Complaint.

Dated at Pittsburgh, Pennsylvania, this 14th day of March 1996.

/s/ Gerald Kobell
Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
1000 Liberty Avenue - Room 1501
Pittsburgh, Pennsylvania 15222

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

Cases 6-CA-27873 and 6-CA-28061

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM, AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a BEVERLY MANOR OF MONROEVILLE

and

DISTRICT 1199P, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

Cases 6-CA-27874 and 6-CA-28046

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a CLARION CARE CENTER

and

DISTRICT 1199P, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

Cases 6-CA-27875 and 6-CA-28049

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTER-

PRISES - PENNSYLVANIA, INC. d/b/a FAYETTE HEALTH CARE CENTER

and

DISTRICT 1199P, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

Cases 6-CA-27876 and 6-CA-28050

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a FRANKLIN CARE CENTER

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 585, AFL-CIO, CLC

Case 6-CA-27877

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES-PENNSYLVANIA, INC. d/b/a GRANDVIEW HEALTH CARE

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 585, AFL-CIO

Cases 6-CA-27878 and 6-CA-28054

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL

FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a HAIDA MANOR

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 585, AFL-CIO, CLC

Cases 6-CA-27879 and 6-CA-28047

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a MEADVILLE CARE CENTER

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 585, AFL-CIO, CLC

Cases 6-CA-27880 and 6-CA-28045

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a MEYERSDALE MANOR

and

DISTRICT 1199P, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

Cases 6-CA-27881 and 6-CA-28057

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES,

WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a MT. LEBANON MANOR CONVALESCENT CENTER

and

DISTRICT 1199P, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

Cases 6-CA-27882 and 6-CA-28052

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a MURRAY MANOR

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 585, AFL-CIO, CLC

Cases 6-CA-27883 and 6-CA-28051

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a RICHLAND MANOR

and

DISTRICT 1199P, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

Cases 6-CA-27884 and 6-CA-28058

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a WILLIAM PENN NURSING CENTER

and

DISTRICT 1199P, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

Cases 6-CA-27889 and 6-CA-28059

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a BEVERLY MANOR MOUNT PENN

and

DISTRICT 1199P, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

Cases 6-CA-27890 and 6-CA-28048

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a BEVERLY MANOR OF LANCASTER

and

PENNSYLVANIA SOCIAL SERVICES UNION LOCAL 668 a/w SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Case 6-CA-27891

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES-PENNSYLVANIA, INC. d/b/a BLUE RIDGE HAVEN CONVALESCENT CENTER WEST

and

PENNSYLVANIA SOCIAL SERVICES UNION LOCAL 668 a/w SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Cases 6-CA-27892 and 6-CA-28060

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a CALEDONIA MANOR

and

PENNSYLVANIA SOCIAL SERVICES UNION LOCAL 668 a/w SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Case 6-CA-27893

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES-PENNSYLVANIA, INC. d/b/a CAMP HILL CARE CENTER

and

PENNSYLVANIA SOCIAL SERVICES UNION LOCAL 668 a/w SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Cases 6-CA-27894 and 6-CA-28053

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES - PENNSYLVANIA, INC. d/b/a CARPENTER CARE CENTER

and

DISTRICT 1199P, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

Case 6-CA-27895

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES-PENNSYLVANIA, INC. d/b/a STROUD MANOR

and

DISTRICT 1199P, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

Case 6-CA-27896

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES-PENNSYLVANIA, INC. d/b/a YORK TERRACE NURSING CENTER

and

DISTRICT 1199P, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

District 1199P, Service Employees International Union, AFL-CIO, CLC, and other labor organizations as set forth above, herein called the Charging Parties, respectively, have charged that Beverly Health and Rehabilitation Services, Inc., its operating regional offices, wholly-owned subsidiaries and individual facilities and each of them, herein called Respondent Beverly H&R, and/or its wholly-owned subsidiary Beverly Enterprises-Pennsylvania, Inc., herein called Respondent Beverly-PA, and herein collectively called Respondent or the Employer, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

Service of the Charges

1. (a) The charge in Case 6-CA-27873 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 13, 1996.

(b) The charge in Case 6-CA-27873 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 13, 1996.

(c) The first amended charge in Case 6-CA-27873 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(d) The first amended charge in Case 6-CA-27873 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(e) The charge in Case 6-CA-28061 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 5, 1996.

(f) The charge in Case 6-CA-28061 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 5, 1996.

(g) The first amended charge in Case 6-CA-28061 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(h) The first amended charge in Case 6-CA-28061 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(i) The charge in Case 6-CA-27874 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 13, 1996.

(j) The charge in Case 6-CA-27874 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 13, 1996.

(k) The first amended charge in Case 6-CA-27874 was filed by District 1199P on May 7, 1996, and a copy was

served by certified mail on Respondent Beverly H&R on May 8, 1996.

(l) The first amended charge in Case 6-CA-27874 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(m) The charge in Case 6-CA-28046 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 4, 1996.

(n) The charge in Case 6-CA-28046 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 4, 1996.

(o) The first amended charge in Case 6-CA-28046 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(p) The first amended charge in Case 6-CA-28046 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(q) The charge in Case 6-CA-27875 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(r) The charge in Case 6-CA-27875 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 14, 1996.

(s) The first amended charge in Case 6-CA-27875 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(t) The first amended charge Case 6-CA-27875 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(u) The charge in Case 6-CA-28049 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 4, 1996.

(v) The charge in Case 6-CA-28049 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 4, 1996.

(w) The first amended charge in Case 6-CA-28049 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(x) The first amended charge in Case 6-CA-28049 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(y) The charge in Case 6-CA-27876 was filed by Local 585 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(z) The charge in Case 6-CA-27876 was filed by Local 585 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 14, 1996.

(aa) The first amended charge in Case 6-CA-27876 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(bb) The first amended charge in Case 6-CA-27876 was filed by Local 585 on May 7, 1996, and a copy was served

by certified mail on Respondent Beverly-PA on May 8, 1996.

(cc) The charge in Case 6-CA-28050 was filed by Local 585 on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 4, 1996.

(dd) The charge in Case 6-CA-28050 was filed by Local 585 on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 4, 1996.

(ee) The first amended charge in Case 6-CA-28050 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(ff) The first amended charge in Case 6-CA-28050 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(gg) The charge in Case 6-CA-27877 was filed by Local 585 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(hh) The charge in Case 6-CA-27877 was filed by Local 585 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 14, 1996.

(ii) The first amended charge in Case 6-CA-27877 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(jj) The first amended charge in Case 6-CA-27877 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(kk) The charge in Case 6-CA-27878 was filed by Local 585 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(ll) The charge in Case 6-CA-27878 was filed by Local 585 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on FEbruary 14, 1996.

(mm) The first amended charge in Case 6-CA-27878 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(nn) The first amended charge in Case 6-CA-27878 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(oo) The charge in Case 6-CA-28054 was filed by Local 585 on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 4k 1996.

(pp) The charge in Case 6-CA-28054 was filed by Local 585 on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 4, 1996.

(qq) The first amended charge in Case 6-CA-28054 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(rr) The first amended charge in Case 6-CA-28054 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(ss) The charge in Case 6-CA-27879 was filed by Local 585 on February 13, 1996, and a copy was served by certi-

fied mail on Respondent Beverly H&R on February 14, 1996.

(tt) The charge in Case 6-CA-27879 was filed by Local 585 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 14, 1996.

(uu) The first amended charge in Case 6-CA-27879 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(vv) The first amended charge in Case 6-CA-27879 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(ww) The charge in Case 6-CA-28047 was filed by Local 585 on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 4, 1996.

(xx) The charge in Case 6-CA-28047 was filed by Local 585 on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 4, 1996.

(yy) The first amended charge in Case 6-CA-28047 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(zz) The first amended charge in Case 6-CA-28047 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(aaa) The charge in Case Case 6-CA-27880 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(bbb) The charge in Case 6-CA-27880 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 14, 1996.

(ccc) The first amended charge in Case 6-CA-27880 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(ddd) The first amended charge in Case 6-CA-27880 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(eee) The charge in Case 6-CA-28045 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 4, 1996.

(fff) The charge in Case 6-CA-28045 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 4, 1996.

(ggg) The first amended charge in Case 6-CA-28045 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(hhh) The first amended charge in Case 6-CA-28045 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(iii) The charge in Case 6-CA-27881 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(jjj) The charge in Case 6-CA-27881 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 14, 1996.

(kkk) The first amended charge in Case 6-CA-27881 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(lll) The first amended charge in Case 6-CA-27881 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(mmm) The charge in Case 6-CA-28057 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 5, 1996.

(nnn) The charge in Case 6-CA-28057 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 5, 1996.

(ooo) The first amended charge in Case 6-CA-28057 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(ppp) The first amended charge in Case 6-CA-28057 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(qqq) The charge in Case 6-CA-27882 was filed by Local 585 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(rrr) The charge in Case 6-CA-28992 was filed by Local 585 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 14, 1996.

(sss) The first amended charge in Case 6-CA-27882 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(ttt) The first amended charge in Case 6-CA-27882 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(uuu) The charge in Case 6-CA-28052 was filed by Local 585 on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 4, 1996.

(vvv) The charge in Case 6-CA-28052 was filed by Local 585 on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 4, 1996.

(www) The first amended charge in Case 6-CA-28052 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(xxx) The first amended charge in Case 6-CA-28052 was filed by Local 585 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(yyy) The charge in Case 6-CA-27883 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(zzz) The charge in Case 6-CA-27883 was filed by District 1199P on February 13, 1996, and a copy was served

by certified mail on Respondent Beverly-PA on February 14, 1996.

(aaaa) The first amended charge in Case 6-CA-27883 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(bbbb) The first amended charge in Case 6-CA-27883 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(cccc) The charge in Case 6-CA-28051 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 4, 1996.

(dddd) The charge in Case 6-CA-28051 was filed by District 1199P on April 4, 1996, and a copy was served by certified mailed on Respondent Beverly-PA on April 4, 1996.

(eeee) The first amended charge in Case 6-CA-28051 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(ffff) The first amended charge in Case 6-CA-28051 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(gggg) The charge in Case 6-CA-27884 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(hhhh) The charge in Case 6-CA-27884 was filed by District 1199P on February 13, 1996, and a copy was served

by certified mail on Respondent Beverly-PA on February 14, 1996.

(iiii) The first amended charge in Case 6-CA-27884 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(jjjj) The first amended charge in Case 6-CA-27884 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(kkkk) The charge in Case 6-CA-28058 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 5, 1996.

(llll) The charge in Case 6-CA-28058 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 5, 1996.

(mmmm) The first amended charge in Case 6-CA-28058 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(nnnn) The first amended charge in Case 6-CA-28058 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(oooo) The charge in Case 6-CA-27889 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(pppp) The charge in Case 6-CA-27889 was filed by District 1199P on February 13, 1996, and a copy was served

by certified mail on Respondent Beverly-PA on February 14, 1996.

(qqqq) The first amended charge in Case 6-CA-27889 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(rrrr) The first amended charge in Case 6-CA-27889 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(ssss) The charge in Case 6-CA-28059 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 5, 1996.

(tttt) The charge in Case 6-CA-28059 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 5, 1996.

(uuuu) The first amended charge in Case 6-CA-28059 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(vvvv) The first amended charge in Case 6-CA-28059 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(wwww) The charge in Case 6-CA-27890 was filed by Local 668 on FEbruary 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(xxxx) The charge in Case 6-CA-27890 was filed by Local 668 on February 13, 1996, and a copy was served by

certified mail on Respondent Beverly-PA on February 14, 1996.

(yyyy) The first amended charge in Case 6-CA-27890 was filed by Local 668 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(zzzz) The first amended charge in Case 6-CA-27890 was filed by Local 668 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(aaaaa) The charge in Case 6-CA-28048 was filed by Local 668 on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 4, 1996.

(bbbbb) The charge in Case 6-CA-28048 was filed by Local 668 on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 4, 1996.

(ccccc) The first amended charge in Case 6-CA-28048 was filed by Local 668 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(ddddd) The first amended charge in Case 6-CA-28048 was filed by Local 668 on May 8, 1996.

(eeeee) The charge in Case 6-CA-27891 was filed by Local 668 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on february 14, 1996.

(fffff) The charge in Case 6-CA-27891 was filed by Local 668 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 14, 1996.

(ggggg) The first amended charge in Case 6-CA-27891 was filed by Local 668 on May 7, 1996, and a copy was

served by certified mail on Respondent Beverly H&R on May 8, 1996.

(hhhhh) The first amended charge in Case 6-CA-27891 was filed by Local 668 on May 7, 1996, and a copy was served by certified jail on Respondent Beverly-PA on May 8, 1996.

(iiiii) The charge in Case 6-CA-27892 was filed by Local 668 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(jjjjj) The charge in Case 6-CA-27892 was filed by Local 668 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 14, 1996.

(kkkkk) The first amended charge in Case 6-CA-27892 was filed by Local 668 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(lllll) The first amended charge in Case 6-CA-27892 was filed by Local 668 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(mmmmm) The charge in Case 6-CA-28060 was filed by Local 668 on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 5, 1996.

(nnnnn) The charge in Case 6-CA-28060 was filed by Local 668 on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 5, 1996.

(ooooo) The first amended charge inCase 6-CA-28060 was filed by Local 668 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(ppppp) The first amended charge in Case 6-CA-28060 was filed by Local 668 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(qqqqq) The charge in Case 6-CA-27893 was filed by Local 668 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(rrrrr) The charge in Case 6-CA-27893 was filed by Local 668 on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on FEbruary 14, 1996.

(sssss) The first amended charge in Case 6-CA-27893 was filed by Local 668 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(ttttt) The first amended charge in Case 6-CA-27893 was filed by Local 668 on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(uuuuu) The charge in Case 6-CA-27894 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(vvvvv) The charge in Case 6-CA-27894 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 14, 1996.

(wwwww) The first amended charge in Case 6-CA-27894 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(xxxxx) the first amended charge in Case 6-CA-27894 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(yyyyy) The charge in Case 6-CA-28053 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly H&R on April 4, 1996.

(zzzzz) The charge in Case 6-CA-28053 was filed by District 1199P on April 4, 1996, and a copy was served by certified mail on Respondent Beverly-PA on April 4, 1996.

(aaaaaa) The first amended charge in Case 6-CA-28053 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(bbbbbb) The first amended charge in Case 6-CA-28053 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(cccccc) The charge in Case 6-CA-27895 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(dddddd) The charge in Case 6-CA-27895 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 14, 1996.

(eeeeee) The first amended charge in Case 6-CA-27895 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(ffffff) The first amended charge in Case 6-CA-27895 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

(gggggg) The charge in Case 6-CA-27896 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly H&R on February 14, 1996.

(hhhhhh) The charge in Case 6-CA-27896 was filed by District 1199P on February 13, 1996, and a copy was served by certified mail on Respondent Beverly-PA on February 14, 1996.

(iiiiii) The first amended charge in Case 6-CA-27896 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly H&R on May 8, 1996.

(jjjjjj) The first amended charge in Case 6-CA-27896 was filed by District 1199P on May 7, 1996, and a copy was served by certified mail on Respondent Beverly-PA on May 8, 1996.

2. (a) At all times material herein, Respondent Beverly H&R, its nursing home operating regions, including, inter alia, eight regional offices as follows: Region 1 located in Leesburg, Virginia, and formerly located in Camp Hill, Pennsylvania; Region 2 located in Duluth, Georgia; Region 3 located in Longwood, Florida; Region 4 located in Carmel, Indiana; Region 5 located in Crestwood, Missouri; Region 6 located in Minneapolis, Minnesota; Region 7 located in Arlington, Texas; and Region 10 located in Rancho Cordova, California; each of which regions include a number of wholly-owned subsidiaries of Respondent, and/or facilities owned directly by Respondent and which operate Respondent's approximately 838 individual nursing

home facilities, with offices and places of business located in 34 states of the United States and the District of Columbia, has been engaged both directly and through its regions, subsidiaries and individual facilities as a health care institution in the operation of nursing homes providing in-patient medical and professional care and services for the elderly, sick and infirm.

(b) At all times material herein, Respondent Beverly H&R, directly or through various nursing home operating regional offices, wholly-owned subsidiaries including Beverly-PA and individual facilities, has been engaged as a health care institution, in the operation of nursing homes providing in-patient medical and professional care and services for the elderly, sick and infirm, at, among others, the following facilities and each of them:

(1) Beverly Manor of Monroeville located in Monroeville, Pennsylvania;

(2) Clarion Care Center located in Clarion, Pennsylvania;

(3) Fayette Health Care Center located in Uniontown, Pennsylvania;

(4) Franklin Care Center located in Waynesburg, Pennsylvania;

(5) Grandview Health Care located in Oil City, Pennsylvania;

(6) HAIDA Manor located in Hastings, Pennsylvania;

(7) Meadville Care Center located in Meadville, Pennsylvania;

(8) Meyersdale Manor located in Meyersdale, Pennsylvania;

(9) Mt. Lebanon Manor Convalescent Center located in Mt. Lebanon, Pennsylvania;

(10) Murray Manor located in Murrysville, Pennsylvania;

(11) Richland Manor located in Johnstown, Pennsylvania;

(12) William Penn Nursing Center located in Lewistown, Pennsylvania;

(13) Beverly Manor Mount Penn located in Mt. Penn, Pennsylvania;

(14) Beverly manor of Lancaster located in Lancaster, Pennsylvania;

(15) Blue Ridge Haven Convalescent Center West located in Camp Hill, Pennsylvania;

(16) Caledonia Manor located in Fayetteville, Pennsylvania;

(17) Camp Hill Care Center located in Camp Hill, Pennsylvania;

(18) Carpenter Care Center located in Tunkhannock, Pennsylvania;

(19) Stroud Manor located in Stroudsburg, Pennsylvania; and

(20) York Terrace Nursing Center located in Pottsville, Pennsylvania.

3. (a) During the 12 month period ending January 31, 1996, Respondent Beverly H&R, operating by and through its nursing home operating regional offices, wholly-owned subsidiaries and individual facilities involved herein and each of them, in the course and conduct of its operations described above, derived gross revenues of $500,000.

(b) During the period described above, Respondent Beverly H&R, in the course and conduct of the operations described above, purchased and received at its various facilities involved herein and each of them, products, goods and

materials valued in excess of $5,000 directly from points outside the states in which the facilities are located.

(c) During the 12 month period ending January 31, 1996, Respondent Beverly-PA, operating by and through its nursing home facilities involved herein and each of them, in the course and conduct of its operations described above, derived gross revenues of $500,000.

(d) During the period described above, Respondent Beverly-PA, in the course and conduct of the operations described above, purchased and received at its various facilities involved herein and each of them, products, goods and materials valued in excess of $5,000 directly from points outside the states in which the facilities are located.

4. At all material times, Respondent Beverly H&R, and its nursing home operating regional offices, wholly-owned subsidiaries including Respondent Beverly-PA and individual facilities, and each of them have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of said operations; have shared common premises and facilities; have provided services for each other; haven interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise.

5. (a) By virtue of its operations described above, Respondent Beverly H&R, and its nursing home operating regional offices, wholly-owned subsidiaries and individual facilities constitute a single integrated business enterprise and a single employer within the meaning of the Act.

(b) By virtue of their operations described above, Respondent, including Respondent Beverly H&R, its nursing home operating regional offices, wholly-owned subsidiaries including Respondent Beverly-PA and individual facilities,

constitute a single integrated business enterprise and a single employer within the meaning of the Act.

6. (a) At all material times, Respondent Beverly H&R, and its nursing home operating regional offices, wholly-owned subsidiaries and individual facilities has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act.

(b) At all material times, Respondent Beverly-PA has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act.

(c) At all material times, Respondent, and its nursing home operating regional offices, wholly-owned subsidiaries and individual facilities has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act.

7. (a) At all material times District 1199P, Service Employees International Union, AFL-CIO, CLC, herein called District 1199P, has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times Service Employees International Union, Local 585, AFL-CIO, CLC, herein called Local 585 has been a labor organization within the meaning of Section 2(5) of the Act.

(c) At all material times Pennsylvania Social Services Union Local 668 a/2 Service Employees International Union, AFL-CIO, herein called Local 668, has been a labor organization within the meaning of Section 2(5) of the Act.

The following allegations are set forth in separate sections delineated by a capitalized letter. Each section contains all of

the allegations concerning the individual facility as alleged in the cases set forth at the head of each of the sections.

A. RE: RESPONDENT'S BEVERLY MANOR OF MONROEVILLE FACILITY LOCATED IN MONROEVILLE, PENNSYLVANIA
6-CA-27873 and 6-CA-28061

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Monroeville facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Casimer M. Wieszorek	–	Administrator
Bonnie Forney	–	Director of Nurses
Bill Evans	–	Maintenance Supervisor

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all times since about December 29, 1995, Respondent has denied representatives of District 1199P access to Respondent's Monroeville facility.

3. In about December, 1995, Respondent removed items from District 1199P's bulletin board which is located in Respondent's Monroeville facility.

4. The following employees of Respondent, herein called the Service and Maintenance Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees employed by the Employer at its Monroeville, Pennsylvania facility but excluding charge nurses, business office clerical employees and guards,

professional employees and supervisors as defined in the Act as certified by the National Labor Relations Board in Case Number 6-RC-9729.

5. On October 24, 1986, in Case 6-RC-9729, District 1199) was certified as the exclusive collective-bargaining representative of the Service and Maintenance Unit.

6. At all times since October 24, 1986, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the Service and Maintenance Unit.

7. The following employees of Respondent, herein called the LPN Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time licensed practical nurses and registered nurses who function as licensed practical charge nurses employed by the Employer at its Monroeville, Pennsylvania facility but excluding service and maintenance employees, business office clerical employees and guards, professional employees and supervisors as defined in the Act and as certified by the National Labor Relations Board.

8. On February 10, 1987, in Case 6-RC-9728, District 1199P was certified as the exclusive collective-bargaining representative of the LPN Unit.

9. At all times since February 10, 1987, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the LPN Unit.

10. About January 16, 1996, Respondent laid off certain of its bargaining unit employees in the laundry department whose identities are presently unknown to the General

Counsel, but particularly within the knowledge of Respondent.

11. Since about February 5, 1996, Respondent reduced the hours of certain of its bargaining unit employees whose identities are presently unknown to the General Counsel, but particularly within the knowledge of Respondent.

12. About February 8, 1996, Respondent laid off its employee Irene Susman, a member of the Service and Maintenance Unit.

13. About February 8, 1996, Respondent laid off its employee Blanche Lyons, a member of the Service and Maintenance Unit.

14. Since about February 8, 1996, Respondent failed and refused to follow seniority when awarding jobs to its bargaining unit employees.

15. About January, 1996, Respondent increased its bargaining unit employees' premium for HMO insurance coverage.

16. The subjects set forth above in paragraphs 2, 3, and 10 through 15, relate to wages, hours and other terms and conditions of employment of the Service and Maintenance and the LPN Units and are mandatory subjects for the purposes of collective bargaining.

17. Respondent engaged in the conduct described above in paragraphs 2, 3, and 10 through 15, without adequate prior notice to District 1199) and without affording District 1199P an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

18. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 1199P gave notice to the Employer at its Monroeville facility of the intent of the employees in the Service and Maintenance and

LPN Units to engage in strike action on or about March 29, 1996; and thereafter Local 1199P notified the Employer at its Monroeville facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) By letter dated March 29, 1996, Local 1199P notified the Employer at its Monroeville facility that it was amending the notice described above in subparagraph (a) by limiting the strike action to three days.

(c) Pursuant to the strike notices set forth above in subparagraphs (a) and (b), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. April 4, 1996, certain employees of Respondent represented by District 1199P and employed at Respondent's Monroeville facility ceased work concertedly and engaged in a strike.

19. The strike described above in paragraph 18 was caused by Respondent's unfair labor practices described above in paragraphs 2, 3, 10 through 15 and 17, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike.

20. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 18, including the employees listed below in subparagraphs (a) and (b), made an unconditional offer to return to their former positions of employment, thus reaffirming the notification set forth above in subparagraph 18(b) above that the strike action would be limited to three days:

(a) Austin, Jackie
Beatty, Craig
Cavanaough, Susan
Greenberg, Rita
Kapral, Jim

Kocsis, Cindy
Luppert, Debbie
Maringo, Anne
Marghella, Nancy
Miller, Kim
Miller, Nancy
Miller, Tina
Noel, Melissa
Northern, Patricia
Oskin, Audrey
Peterson, Cathy
Price, Rolanda
Reeves, Alisha
Sovko, Constance
Stanley, Donna
Stover, Lori
Suman, Irene
Temsick, Lorraine
Whitley, Leslie
Wilson, John

(b) Ludrosky, Norma

21. (a) Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in subparagraph 20(a) to their former positions of employment.

(b) Since about April 4, 1996, Respondent, by letter, has failed and refused to fully reinstate certain striking employees, including the employee named above in subparagraph 20(b) to her former position of employment.

22. By the conduct described above in paragraphs 2 and 3, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

23. By the conduct described above in paragraph 21, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

24. By the conduct described above in paragraphs 2, 3, 10 through 15 and 17, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

25. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

B. RE: RESPONDENT'S CLARION CARE CENTER FACILITY LOCATED IN CLARION, PENNSYLVANIA
6-CA-27874 and 6-CA-28046

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Clarion facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Gale Owens	–	Administrator
Karona Say	–	Director of Nurses

(b) At all material times Wayne Chapman held the position of Respondent Beverly-PA's Regional Director of Associate Relations and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

(c) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. About December 22, 1995, Respondent removed District 1199P's bulletin board which had been located in Respondent's Clarion facility.

3. The following employees of Respondent, herein called the Service and Maintenance Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Said bargaining units [sic] include all nurses' aides, cooks, dietary aides, laundry aides, housekeeping aides and activities assistants employed by the Employer and Health Care Services, Inc. at its Clarion, Pennsylvania, Facility. Said unit excludes all full-time and regular part-time licensed practical nurses, general practical nurses, casual employees, maintenance employees, the administrator, department heads, the assistant director ofnursing, office clerical employees, technical employees, registered nurses, guards, professional employees and supervisors as defined in the National Labor Relations Act.

4. On April 24, 1990, in Case 6-RC-10290, District 1199P was certified as the exclusive collective-bargaining representative of the Service and Maintenance Unit.

5. At all times since April 24, 1990, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the Service and Maintenance Unit.

6. The following employees of Respondent, herein called the LPN Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Said bargaining units [sic] include all full-time and regular part-time licensed practical nurses and general practical nurses, employed by the Employer at its

Clarion, Pennsylvania, Facility. Said unit excludes all nurses' aides, cooks, dietary aides, laundry aides, housekeeping aides and activities assistants [sic] casual employees, maintenance employees, the administrator, department heads, the assistant director of nursing, office clerical employees, technical employees, registerednurses, guards, professional employees and supervisors as defined in the National Labor Relations Act.

7. On June 19, 1990, in Case 6-RC-10439, District 1199P was certified as the exclusive collective-bargaining representative of the LPN Unit.

8. At all times since June 19, 1990, based on Section 9(a) of the Act,District 1199P has been the exclusive collective-bargaining representative of the LPN Unit.

9. About January 11, 1996, Respondent announced the reduction of its unit employees' hours in the dietary and laundry departments, effective February 1, 1996.

10. (a) By letter recieved by the Charging Parties on November 28, 1995, Respondent announced that it would discontinue the 1199P Health and Welfare Fund HMO effective January 1, 1996.

(b) About December 5, 1995, by letter, the Charging Parties requested that Respondent bargain over the decision to discontinue the 1199P Health and Welfare Fund HMO.

(c) About December 11, 1995, by letter, Respondent refused to bargain over the continuation or replacement of the 1199P Health and Welfare Fund HMO.

11. About January 1, 1996, Respondent imposed replacement health insurance plan(s) for the unit employees in the Service and Maintenance and the LPN Units.

12. Since about February 1, 1996, Respondent reduced the hours of certain of its bargaining unit employees in the

dietary and laundry departments whose identities are presently unknown to the General Counsel, but particularly within the knowledge of Respondent, and since said date has failed and refused to fully reinstate said employees.

13. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

14. The subjects set forth above in paragraphs 2 and 9 through 13 relate to wages, hours and other terms and conditions of employment of the Service and Maintenance and the LPN Units and are mandatory subjects for the purposes of collective bargaining.

15. Respondent engaged in the conduct described above in paragraphs 2 and 9 through 13 without adequate prior notice to District 1199P and without affording District 1199P an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

16. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 1199P gave notice to the Employer at its Clarion facility of the intent of the employees in the the Service and Maintenance and LPN Units to engage in strike action on or about March 29, 1996; and thereafter Local 1199P notified the Employer at its Clarion facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) By letter dated March 30, 1996, Local 1199P notified the Employer at its Clarion facility that it was amending the notice described above in subparagraph (a) by limiting the strike action to three days.

(c) Pursuant to the strike notices set forth above in subparagraphs (a) and (b), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by District 1199 P and

employed at Respondent's Clarion facility ceased work concertedly and engaged in a strike.

17. The strike described above in paragraph 16 was caused by Respondent's unfair labor practices described above in paragraphs 2, 9 through 13 and 15, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the Commencement of the strike which occurred prior to the commencement of the strike.

18. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 16, including the employees listed below, made an unconditional offer to return to their former positions of employment, thus reaffirming the notification set forth above in subparagraph 16(b) above that the strike action would be limited to three days:

Alden, John
Aldous, Luetta
Beary, Kristin
Bish, Charlene
Bish, Steve
Bowser, Sandy
Burns, Dawn
Colvin, Rasma
Corle, Debbie
Croyle, James
Cyphert, Deb
Dolby, Lisa
Fink, Cindy
Fleming, Maryann
Gourley, Ethel
Hetrick, Shelly
Hilliard, Rhonda
Kendra, Deb

McGuire, April
Polliard, Linda
Rankin, Florence
Rossey, Jodie
Siegal, Tina
Stewart, Denise
Stiglitz, Pauline
Williams, Lisa
Young, Mike

19. Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in paragraph 18 to their former positions of employment.

20. By the conduct described above in paragraph 2, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

21. By the conduct described above in paragraph 19, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

22. By the conduct described above in paragraphs 2, 9 through 13 and 15, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

23. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

C. RE: RESPONDENT'S FAYETTE HEALTH CARE FACILITY LOCATED IN UNIONTOWN, PENNSYLVANIA
6-CA-27875 and 6-CA-28049

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Fayette facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

James Filippone	–	Administrator
Barbara Toth	–	Human Resources
Erma Tichner	–	Dietary Manager
Joyce Hoch	–	Director of Nurses
Kathy Wible	–	Assistant Director of Nurses

(b) At all material times Wayne Chapman held the position of Respondent Beverly-PA's Regional Director of Associate Relations and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

(c) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all times since about the last week of December, 1995, Respondent has denied representatives of District 1199P access to Respondent's Fayette facility.

3. About December 20, 1995, Respondent removed District 1199P's bulletin board which had been located inside Respondent's Fayette facility.

4. The following employees of Respondent, herein called the Service and Maintenance Unit, constitute a unit appropriate for the purposes of collective bargaing within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees employed by the Employer at its Uniontown, Pennsylvania facility but excluding charge nurses, business office clerical employees and guards, professional employees and supervisors as defined in the Act and as certified by the National Labor Relations Board in Case Number 6-RC-9724.

5. On December 3, 1986, in Case 6-RC-9724, District 1199P was certified as the exclusive collective-bargaining representative of the Service and Maintenance Unit.

6. At all times since December 3, 1986, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the Service and Maintenance Unit.

7. The following employees of Respondent, herein called the LPN Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time licensed practical nurses employed by the Employer at its Uniontown, Pennsylvania facility but excluding service and maintenance employees, charge nurses, business office clerical employees, guards, professional employees and supervisors as defined in the Act as certified by the National Labor Relations Board.

8. On February 10, 1987, District 1199P was certified as the exclusive collective-bargaining representative of the LPN Unit.

9. At all times since February 10, 1987, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the LPN Unit.

10. (a) By letter recieved by the Charging Parties on November 28, 1995, Respondent announced that it would discontinue the 1199P Health and Welfare Fund HMO effective January 1, 1996.

(b) About December 5, 1995, by letter, the Charging Parties requested that Respondent bargain over the decision to discontinue the 1199P Health and Welfare Fund HMO.

(c) About December 11, 1995, by letter, Respondent refused to bargain over the continuation or replacement of the 1199P Health and Welfare Fund HMO.

11. About January 1, 1996, Respondent imposed replacement health insurance plan(s) for the employees in the Service and Maintenance and the LPN Units.

12. Since about mid-January 1996, Respondent has reduced the hours of certain of its bargaining unit employees whose identities are presently unknown to the General Counsel, but particularly within the knowledge of Respondent.

13. About January 25, 1996, Respondent changed the job duties of its LPN's.

14. About January 25, 1996, Respondent, by Toth, at Respondent's Fayette facility, bypassed District 1199P and dealt directly with its employees in the LPN Unit by discussing changes in their job duties.

15. About January, 1996, Respondent increased its bargaining unit employees' premium for HMO insurance coverage.

16. The subjects set forth above in paragraphs 2, 3 and 10 through 15, relate to wages, hours and other terms and conditions of employment of the Service and Maintenance and the LPN Units and are mandatory subjects for the purposes of collective bargaining.

17. Respondent engaged in the conduct described above in paragraphs 2, 3 and 10 through 15 without adequate prior notice to District 1199P and without affording District 1199P an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

18. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 1199P gave notice to the Employer at its Fayette facility of the intent of the employees in the Service and Maintenance and LPN Units to engage in strike action on or about March 29, 1996; and thereafter Local 1199P notified the Employer at its Fayette facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) By letter dated March 29, 1996, Local 1199P notified the Employer at its Fayette facility that it was amending the notice described above in subparagraph (a) by limiting the strike action to three days.

(c) Pursuant to the strike notices set forth above in subparagraphs (a) and (b), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by District 1199P and employed at Respondent's Fayette facility ceased work concertedly and engaged in a strike.

19. The strike described above in paragraph 18 was caused by Respondent's unfair labor practices described above in paragraphs 2, 3, 10 through 15 and 17, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike which occurred prior to the commencement of the strike.

20. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 18, including the employees

listed below, made an unconditional offer to return to their former positions of employment, thus reaffirming the notification set forth above in subparagraph 18(b) above that the strike action would be limited to three days:

Apicella, Sue Ann
Baughman, Karen
Beattie, Tena
Bowser, Nancy
Christopher, Yvonne
Cunningham, Leona
Daniels, Melissa
Elwell, Jackie
Evans, Dora
Fabrycki, Vickie
Guthire, Earl
Howell, Shawn
Illig, Shannon
Joplin, Judy
Leonard, Rita
Lewis, Kathy
Malarich, Tammy
Martin, Katie
McGregor, Janet
Miller, Barbara
Miller, Melissa
Monaghan, Dale
Myers, Mary Null
Noakes, Helen
Oravets, Marsha
Pankratz, Donna
Pulice, Stephanie
Rankin, Cheryl
Rankin, Ron
Reckner, Joanne
Rocca, Carolyn

Shaw, Sharon
Starkey, JoAnne
Staycer, Judith
Stout, Joe
Stralko, Charlotte
Sutton, Beatrice
Swaney, Starlet
Thomas, Doris
Valentine, Ellen
Whoolery, Cindy
Wilson, Waneda
Ziegler, Phyllis

21. Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in paragraph 20 to their former positions of employment.

22. By the conduct described above in paragraphs 2 and 3, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

23. By the conduct described above in paragraph 21, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

24. By the conduct described above in paragraphs 2, 3, 10 through 15 and 17, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

25. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

D. RE: RESPONDENT'S FRANKLIN CARE CENTER FACILITY LOCATED IN WAYNESBURG, PENNSYLVANIA
6-CA-27876 and 6-CA-28050

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Franklin facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

LuAnn Abbidini	–	Administrator
Loretta Bosworth	–	Director of Nurses
Carol Judd	–	Supervisor
Rhonda Wrona-Kroftcheck	–	RN Supervisor

(b) At all material times Wayne Chapman held the position of Respondent Beverly-PA's Regional Director of Associate Relations and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

(c) At all material times Ronald J. St. cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. In about January, 1996, Respondent removed Local 585's bulletin board which had been located inside Respondent's Franklin facility.

3. (a) On April 27, 1987, in Case 6-RC-9815, Local 585 was certified as the exclusive collective-bargaining representative of the service and maintenance employees employed by Respondent at Respondent's Franklin facility.

(b) At all times since April 27, 1987, based on Section 9(a) of the Act, Local 585 has been the exclusive collective-bargaining representative of the service and maintenance employee employed by Respondent at Respondent's Franklin facility.

4. (a) On January 28, 1991, in Case 6-RC-10540, Local 585 was certified as the exclusive collective-bargaining representative of the licensed practical nurses employed by Respondent at Respondent's Franklin facility.

(b) At all times since January 28, 1991, based on Section 9(a) of the Act, the Local 585 has been the exclusive collective-bargaining representative of the licensed practical nurses employed by Respondent at Respondent's Franklin facility.

5. (a) By mutual agreement, Local 585 and Respondent have merged the two appropriate units set forth above into a single appropriate bargaining unit as described in the most recent collective bargaining agreement, herein referred to as the Unit.

(b) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees and licensed practical nurses, including nurse aides, dietary aides, cooks, chefs, housekeepers, laundry employees, central supply clerks, the activities aides, the ward clerk and physical therapy aides employed by the Employer at its Waynesburg, Pennsylvania facility; the unit excludes all other employees, registered nurse, office clerical employees and guards, supervisors and professional employees as defined in the National Labor Relations Act.

6. (a) By letter recieved by the Charging Parties on November 28, 1995, Respondent announced that it would discontinue the 1199P Health and Welfare Fund HMO effective January 1, 1996.

(b) About December 5, 1995, by letter, the Charging Parties requested that Respondent bargain over the decision to discontinue the 1199P Health and Welfare Fund HMO.

(c) About December 11, 1995, by letter, Respondent refused to bargain over the continuation or replacement of the 1199P Health and Welfare Fund HMO.

7. About January 1, 1996, Respondent imposed replacement health insurance plan(s) for the employees in the Unit.

8. Since about February 14, 1996, Respondent has reduced the hours of certain of its bargaining unit employees whose identities are presently unknown to the General Counsel, but particularly within the knowledge of Respondent.

9. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

10. The subjects set forth above in paragraphs 2 and 6 through 9 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

11. Respondent engaged in the conduct described above in paragraphs 2 and 6 through 9 without adequate prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

12. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 585 gave notice to the Employer at its Franklin facility of the intent of

the employees in the Service and Maintenance and LPN Units to engage in strike action on or about March 29, 1996; and thereafter Local 585 notified the Employer at its Franklin facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) Pursuant to the strike notices set forth above in subparagraph (a), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by Local 585 and employed at Respondent's Franklin facility ceased work concertedly and engaged in a strike.

13. The strike described above in paragraph 12 was caused by Respondent's unfair labor practices described above in paragraphs 2, 6 through 9, and 11, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike which occurred prior to the commencement of the strike.

14. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 12, including the employees listed below in subparagraphs (a) and (b) made an unconditional offer to return to their former positions of employment:

(a) Adamson, Tammy
Bosworth, Debbie
Crouse, Virginia
Cumberledge, Lori
Eddy, Julie
Ferrell, Donna
Jackson, Peg
Keller, Tom
Kennedy, Jim
Kovach, Donna

Milliken, Kimberly (Kay)
Reagan, Cindy
Rice, Johnna
Scott, Vicky
Shaffer, Shelly
Van Meter, Kim
Wolf, Angie

(b) Bailey, Betsy
Bell, Sally
Davidson, Valerie
Eddy, Grace
Evans, Donna
Fowler, Mary Ann
Jolliffe, Melody
Makel, Charlotte
Martin, Mary Alice
Mason, Cindy
Matyasic, Kathy
Mego, Anna
Metz, Linda
Morris, Netti
Robson, Rob
Ross, Jackie
Swanger, Clara
Tennant, Renee
Tennant, Peg

15. (a) Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in subparagraph 14(a) to their former positions of employment.

(b) Since about April 4, 1996, Respondent, by letter, has failed and refused to fully reinstate certain striking employees including those named above in subparagraph 14(b) to their former positions of employment.

16. By the conduct described above in paragraph 2, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

17. By the conduct described above in paragraph 15, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

18. By the conduct described above in paragraphs 2, 6 through 9, and 11, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

19. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

E. RE: RESPONDENT'S GRANDVIEW HEALTH CARE FACILITY LOCATED IN OIL CITY, PENNSYLVANIA
6-CA-27877

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Grandview facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Tamara Montell	–	Administrator
Theresa Stack	–	Assistant Director of Nurses

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager

and her been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all times since about December 8, 1995, Respondent has denied representatives of Local 585 access to Respondent's Grandview facility.

3. At all times since about December 8, 1995, Respondent has directed that all items be removed from Local 585's bulletin board located inside Respondent's Grandview facility.

4. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance associates including nursing assistants, housekeepers, dietary aides, cooks, laundry aides, unit clerk, floor maintenance and activity aides employed by the Employer at is 1293 Grandview Road, Oil City, Pennsylvania, facility; said unit excluding all other associates including casual and temporary associates, guards and supervisors as defined in the National Labor Relations Act.

5. On September 26, 1991, in Case 6-RC-10627, Local 585 was certified as the exclusive collective-bargaining representative of the Unit.

6. At all times since September 26, 1991, based on Section 9(a) of the Act, Local 585 has been the exclusive collective-bargaining representative of the Unit.

7. Since about November 1995, Respondent reduced the working hours of its unit employees in the housekeeping and dietary departments whose identities are presently unknown to the General Counsel, but particularly within the

knowledge of Respondent, and since said date has failed and refused to fully reinstate said employees.

8. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

9. The subjects set forth above in paragraphs 2, 3, 7 and 8, relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

10. Respondent engaged in the conduct described above in paragraphs 2, 3, 7 and 8, without adequate prior notice to Local 585 and without affording Local 585 an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

11. By the conduct described above in paragraphs 2 and 3, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

12. By the conduct described above in paragraphs 2, 3, 7, 8 and 10, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

13. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

F. RE: RESPONDENT'S HAIDA MANOR FACILITY LOCATED IN HASTINGS, PENNSYLVANIA
6-CA-27878 and 6-CA-28054

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's HAIDA facility and have been supervisors of

Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Pauline Formeck	–	Administrator
Nancy Pietak	–	Assistant Director of Nurses
Bonnie Sable	–	RN Supervisor

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all times since about January 20, 1996, Respondent has denied representatives of Local 585 access to Respondent's HAIDA facility.

3. At all times since about late December, 1995, Respondent has directed that all items be removed from Local 585's bulletin board located inside Respondent's HAIDA facility.

4. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regularly scheduled part-time service and maintenance employees, including nurse aides, dietary aides, cooks, housekeeping aide and laundry aides employed by the Employer at its Hastings, Pennsylvania facility; said unit excluding licensed practical nurses, registered nurses, department heads, business office clericals, medical records clerks, temporary and casual employees and guards and supervisors as defined in the National Labor Relations Act.

5. On September 9, 1987, in Case 6-RC-9879, Local 585 was certified as the exclusive collective-bargaining representative of the Unit.

6. At all times since September 9, 1987, based on Section 9(a) of the Act, Local 585 has been the exclusive collective-bargaining representative of the Unit.

7. About January, 1996, Respondent increased its unit employees' premium for the HMO insurance coverage.

8. The subjects set forth above in paragraphs 2, 3 and 7 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

9. Respondent engaged in the conduct described above in paragraphs 2, 3 and 7 without adequate prior notice to Local 585 and without affording Local 585 an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

10. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 585 gave notice to the Employer at its HAIDA facility of the intent of the employees in the Service and Maintenance and LPN Units to engage in strike action on or about March 29, 1996; and thereafter Local 585 notified the Employer at its HAIDA facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) Pursuant to the strike notices set forth above in subparagraph (a), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by Local 585 and employed at Respondent's HAIDA facility ceased work concertedly and engaged in a strike.

11. The strike described above in paragraph 10 was caused by Respondent's unfair labor practices described above in paragraphs 2, 3, 7 and 9, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike which occurred prior to the commencement of the strike.

12. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 10, including the employees listed below in subparagraphs (a) and (b) made an unconditional offer to return to their former positions of employment:

(a) Brawley, Brenda
Bush, Jenny
Cruise, Vonda
Depto, Deborah
Keefe, Charlene
Lechene, Theresa
Leslie, Sandy
Lubert, Rose Marie
McCullough, Ruth
Miller, Samantha
Morgan, Terri
Muffie, Linda
Piatiak, Patty
Pierce, Ruth
Rayba, Mary Ellen
Rietsha, Susan
Savage, Jean
Schroch, Veronica
Sherry, Marilyn
Shields, Brenda
Shutty, Kathy
Thomas, Janet

Whiteford, Barbara
Wilkie, Evelyn
Williams, Dolores Jean
Yeaglin, Linda
Yeckley, Heather
Zabinsky, Donna

(b) Bailey, Gail
Biter, Janet
Cence, Mary
Katchmier, John
Kollar, Constance
Magulik, Shirley
Ondreko, Esther
Thomas, Helen

13. (a) Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in subparagraph 12(a) to their former positions of employment.

(b) Since about April 4, 1996, Respondent, by letter, has failed and refused to fully reinstate certain striking employees including those named above in subparagraph 12(b) to their former positions of employment.

14. By the conduct described above in paragraphs 2 and 3, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

15. By the conduct described above in paragraph 13, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

16. By the conduct described above in paragraphs 2, 3, 7 and 9, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

17. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

G. RE: RESPONDENT'S MEADVILLE CARE CENTER FACILITY LOCATED IN MEADVILLE, PENNSYLVANIA
6-CA-27879 and 6-CA-28047

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Meadville facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

John Ferritto	–	Administrator
Julie Walters	–	Director of Nurses
Carol Alexander	–	Housekeeping and Laundry Supervisor

(b) At all material times Wayne Chapman held the position of Respondent Beverly-PA's Regional Director of Associate Relations and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

(c) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all times since about January 4, 1996, Respondent has denied representatives of Local 585 access to Respondent's Meadville facility.

3. About November 16, 1995, Respondent, by Ferritto, at Respondent's Meadville facility, disparaged Local 585 in the presence of Respondent's employees.

4. About November 16, 1995, Respondent, by Ferritto, at Respondent's Meadville facility, threatened its employees that it would engage in surveillance of its employees engaging in union and/or concerted activities.

5. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees, including nurse aides, dietary aides, cooks, chefs, housekeepers, laundry employees, central supply clerks, the activities aides, the ward clerk and physical therapy aides employed by the Employer at its Meadville Pennsylvania facility; the unit excludes all other employees, registered nurse, licensed practical nurses, office clerical employees and guards, supervisors and professional employees as defined in the National Labor Relations Act.

6. On October 20, 1986, in Case 6-RC-9737, Local 585 was certified as the exclusive collective-bargaining representative of the Unit.

7. At all times since October 20, 1986, based on Section 9(a) of the Act, Local 585 has been the exclusive collective-bargaining representative of the Unit.

8. (a) By letter recieved by the Charging Parties on November 28, 1995, Respondent announced that it would discontinue the 1199P Health and Welfare Fund HMO effective January 1, 1996.

(b) About December 5, 1995, by letter, the Charging Parties requested that Respondent bargain over the decision to discontinue the 1199P Health and Welfare Fund HMO.

(c) About December 11, 1995, by letter, Respondent refused to bargain over the continuation or replacement of the 1199P Health and Welfare Fund HMO.

9. About January 1, 1996, Respondent imposed replacement health insurance plan(s) for the employees in the Unit.

10. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

11. The subjects set forth above in paragraphs 2 through 4 and 8 through 10 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

12. Respondent engaged in the conduct described above in paragraphs 2 through 4 and 8 through 10 without adequate prior notice to Local 585 and without affording Local 585 an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

13. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 585 gave notice to the Employer at its Meadville facility of the intent of the employees in the Service and Maintenance Unit to engage in strike action on or about March 29, 1996; and thereafter Local 585 notified the Employer at its Meadville facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) Pursuant to the strike notices set forth above in subparagraph (a), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by Local 585 and employed at

Respondent's Meadville facility ceased work concertedly and engaged in a strike.

14. The strike described above in paragraph 13 was caused by Respondent's unfair labor practices described above in paragraphs 2 through 4, 8 through 10 and 12, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike which occurred prior to the commencement of the strike.

15. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 13, including the employees listed below in subparagraphs (a) and (b), made an unconditional offer to return to their former positions of employment:

(a) Alexander, Sheri
Anderson, Linda
Beuchat, Joane
Bowman, Paula
Barnes, Nancy
Bump, Daniel
Cervone, Patricia
Doubet, Linda
Donor, Sandra
Ensworth, Barbara
Foust, Darlene
Fife, Mary
Grinnell, Bonnie
Goodrum, Joyce
Glancy, Barb
Huttlemayer, Nancy
Kelso, Deborah
Lindstrom, Ida
Mattis, Shannon

Pickens, Bettie
Parady, Thomas
Proctor, Katrina
Rogers, Nancy
Stephens, David
Sutley, Lois
Vandervolt, Pauline
Weikel, Vickie
Whitman, Julie
Whitman, Pam

(b) Mattocks, Nancy Joe

16. (a) Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in subparagraph 15(a) to their former positions of employment.

(b) Since about April 4, 1996, Respondent, by letter, has failed and refused to fully reinstate certain striking employees, including the employee named above in subparagraph 15(b) to her former position of employment.

17. By the conduct described above in paragraphs 2 through 4, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

18. By the conduct described above in paragraph 16, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

19. By the conduct described above in paragraphs 2 through 4, 8 through 10 and 12, Respondent has been failing and refusing to bargain collectively and in good faith with

the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

20. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

H. RE: RESPONDENT'S MEYERSDALE MANOR FACILITY LOCATED IN MEYERSDALE, PENNSYLVANIA
6-CA-27880 and 6-CA-28045

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Meyersdale facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Michael Walker	–	Administrator
Theresa Landis	–	Environmental Coordinator
Kathy Grube	–	Assistant Director of Nurses
Verna Hansader	–	RN Supervisor

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees employed by the Employer at its Meyersdale, Pennsylvania facility located at 201 Hospital Drive, Meyersdale, Pennsylvania, certified by the National Labor Relations Board in Case Number 6-RC-9786, said unit excluding business officer clinical [sic]

employees, licensed practical nurses, registered nurses, department heads and guards other professional employees and other supervisors as defined in the Act.

3. On February 17, 1987, in Case 6-RC-9786, District 1199P was certified as the exclusive collective-bargaining representative of the Unit.

4. At all times since February 17, 1987, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the Unit.

5. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

6. The subject set forth above in paragraph 5 relates to wages, hours and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

7. Respondent engaged in the conduct described above in paragraph 5 without adequate prior notice to District 1199P and without affording District 1199P an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

8. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 1199P gave notice to the Employer at its Meyersdale facility of the intent of the employees in the Service and Maintenance Unit to engage in strike action on or about March 29, 1996; and thereafter Local 1199P notified the Employer at its Meyersdale facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) By letter dated March 30, 1996, Local 1199P notified the Employer at its Meyersdale facility that it was amending the notice described above in subparagraph (a) by limiting the strike action to three days.

(c) Pursuant to the strike notices set forth above in subparagraphs (a) and (b), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by District 1199P and employed at Respondent's Meyersdale facility ceased work concertedly and engaged in a strike.

9. The strike described above in paragraph 8 was caused by Respondent's unfair labor practices described above in paragraphs 5 and 7, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike which occurred prior to the commencement of the strike.

10. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 8, including the employees listed below in subparagraphs (a) and (b), made an unconditional offer to return to their former positions of employment, thus reaffirming the notification set forth above in subparagraph 8(b) above that the strike action would be limited to three days:

(a) Brown, Jon
Cochran, Linda
Durst, Sue
Fisher, Sue
Grasser, Mary
Hoover, Deb
Hutzel, Edith
Kelly, Mary
Kelly, Penny
Landis, Scott
Menser, Dana
Merrbach, Donna
Mishler, Sharon

Sanner, Dawn
Secrest, Pam

(b) Bauer, Marie
Berkley, Joe
Compton, Peggy
Crayton, Tammy
Durst, Jean
Durst, Mary Beth
Duvall, Shirley
Leazier, Gladys
Maust, Dee
Miner, Rozella
Oakes, Sheila
Poorbaugh, Chris
Pugh, Mindy
Raygor, Melissa
Sanner, Brenda
Shafer, Lisa
Wilburn, Beverly Sue
Wolfrays, Kathy
Zimmerman, Patty

11. (a) Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in subparagraph 10(a) to their former positions of employment.

(b) Since about April 4, 1996, Respondent, by letter, has failed and refused to fully reinstate certain striking employees including those named above in subparagraph 10(b) to their former positions of employment.

12. By the conduct described above in paragraph 11, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

13. By the conduct described above in paragraphs 5 and 7, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

14. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

I. RE: RESPONDENT'S MT. LEBANON MANOR CONVALESCENT CENTER FACILITY LOCATED IN MT. LEBANON, PENNSYLVANIA
6-CA-27881 and 6-CA-28057

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Mt. Lebanon facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Anthony J. Molinaro	–	Administrator
Hope Wheeler	–	Director of Nurses
Jane Thorsen	–	RN Supervisor
Joan Loffer	–	RN Supervisor
Carol Hall	–	Housekeeping Supervisor
Laura	–	Dietary Supervisor

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all times since about December 29, 1995, Respondent has denied representatives of District 1199P access to Respondent's Mt. Lebanon facility.

3. The following employees of Respondent, herein called the Service and Maintenance Unit, constitute a unit appro-

priate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part-time service and maintenance employees including central supply aide and activity aide employed by the Employer at its Mt. Lebanon Manor Convalescent Center facility in Pittsburgh, Pennsylvania; excluding charge nurses, business office clerical employees, nursing service secretary and guards, professional employees and supervisors as defined in the Act and as certified by the National Labor Relations Board in Case Number 6-RC-10015.

4. On September 27, 1988, in Case 6-RC-10015, District 1199P was certified as the exclusive collective-bargaining representative of the Service and Maintenance Unit.

5. At all times since September 27, 1988, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the Service and Maintenance Unit.

6. The following employees of Respondent, herein called the LPN Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time licensed practical nurses employed by the Employer at its Mt. Lebanon Manor Convalescent Center facility in Pittsburgh, Pennsylvania; excluding service and maintenance employees, charge nurses, business office clerical employees, and guards, professional employees and supervisors as defined in the Act and as certified by the National Labor Relations board in Case Number 6-RC-10079.

7. On November 14, 1988, in Case 6-RC-10079, District 1199P was certified as the exclusive collective-bargaining representative of the LPN Unit.

8. At all times since November 14, 1988, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the LPN Unit.

9. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

10. The subjects set forth above in paragraphs 2 and 9 relate to wages, hours and other terms and conditions of employment of both the Service and Maintenance and the LPN Units and are mandatory subjects for the purposes of collective bargaining.

11. Respondent engaged in the conduct described above in paragraphs 2 and 9 without adequate prior notice to District 1199P and without affording District 1199P an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

12. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 1199P gave notice to the Employer at its Mt. Lebanon facility of the intent of the employees in the Service and Maintenance and LPN Units to engage in strike action on or about March 29, 1996; and thereafter Local 1199P notified the Employer at its Mt. Lebanon facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) By letter dated March 31, 1996, Local 1199P notified the Employer at its Mt. Lebanon facility that it was amending the notice described above in subparagraph (a) by limiting the strike action to three days.

(c) Pursuant to the strike notices set forth above in subparagraphs (a) and (b), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by District 1199P and employed at Respondent's Mt. Lebanon facility ceased work concertedly and engaged in a strike.

13. The strike described above in paragraph 12 was caused by Respondent's unfair labor practices described above in paragraphs 2, 9 and 11, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike which occurred prior to the comencement of the strike.

14. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 12, including the employees listed below in subparagraphs (a) and (b), made an unconditional offer to return to their former positions of employment, thus reaffirming the notification set forth above in subparagraph 12(b) above that the strike action would be limited to three days:

(a) Angelo, Tracy
Chojiniki, Susan
Cooper, Jane
Custer, Patricia
Dulaney, Chris
Fields, Donna
Fields, Charles
Girdany, Rose
Grey, Tracy
Guy, Ken
Healy, Andrea
Kazmierczak, Doloris
Kraycar, Marie
Malachow, John
Matthews, Angel
Meissner, Darlene
Mutchler, Thomas
Reiland, Roberta
Sickles, Julie
Staley, Francis

Vechio, Angela
Walters, Loretta
West, Sandy

(b) Allen, Marsha
Brown, Charles
Davis, Sandi
Dobrowsky, Anna
Fries, Chris
Miller, Pat
Novak, Chris
Shaeffer, Angie
Sheridan, Mary Beth
Silva, Marvin
Staley, Leroy

15. (a) Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in subparagraph 14(a) to their former positions of employment.

(b) Since about April 4, 1996, Respondent, by letter, has failed and refused to fully reinstate certain striking employees including those named above in subparagraph 14(b) to their former positions of employment.

16. By the conduct described above in paragraph 2, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

17. By the conduct described above in paragraph 15, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

18. By the conduct described above in paragraphs 2, 9 and 11, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

19. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

J. RE: RESPONDENT'S MURRAY MANOR FACILITY LOCATED IN MURRYSVILLE, PENNSYLVANIA
6-CA-27882 and 6-CA-28052

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Murray facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Daniel Landis	–	Administrator
Mary Sauers	–	Director of Nurses
Gloria Grove	–	Assistant Director of Nurses
Beverly McGill	–	Laundry and Housekeeping Supervisor

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all times since about early December, 1995, Respondent has removed all items placed on Local 585's bulletin board located inside Respondent's Murray facility.

3. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of

collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees, including nurse aides, dietary aides, cooks, chefs, housekeepers, laundry employees, central supply clerks, the activities aides, the ward clerk and physical therapy aides employed by the Employer at its Murrysville, Pennsylvania facility; the unit excludes all other employees, registered nurses, licensed practical nurses, office clerical employees and guards, supervisors and professional employees as defined in the National Labor Relations Act.

4. On May 23, 1988, in Case 6-RD-1039, Local 585 was certified as the exclusive collective-bargaining representative of the Unit.

5. At all times since May 23, 1988, based on Section 9(a) of the Act, Local 585 has been the exclusive collective-bargaining representative of the Unit.

6. Since about January 17, 1996, Respondent reduced the working hours of its unit employees in the laundry department whose identities are presently unknown to the General Counsel, but particularly within the knowledge of Respondent.

7. Since about January 17, 1996, Respondent has failed and refused to post available jobs.

8. Since about January 17, 1996, Respondent has combined jobs in the dietary and laundry departments.

9. Since about January 17, 1996, Respondent has failed and refused to follow seniority when awarding jobs to its unit employees.

10. About January 17, 1996, Respondent laid off its unit employee Helen Ressler and others of its unit employees

whose identities are presently unknown to the General Counsel, but particularly within the knowledge of Respondent.

11. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

12. The subjects set forth above in paragraphs 2 and 6 through 11 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

13. Respondent engaged in the conduct described above in paragraphs 2 and 6 through 11 without adequate prior notice to Local 585 and without affording Local 585 an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

14. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 585 gave notice to the Employer at its Murray facility of the intent of the employees in the Service and Maintenance Unit to engage in strike action on or about March 29, 1996; and thereafter Local 585 notified the Employer at its Murray facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) Pursuant to the strike notices set forth above in subparagraph (a), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by Local 585 and employed at Respondent's Murray facility ceased work concertedly and engaged in a strike.

15. The strike described above in paragraph 14 was caused by Respondent's unfair labor practices described above in paragraphs 2, 6 through 11 and 13, as well as Respondent's unfair labor practices at other facilities as de-

scribed in this Consolidated Complaint which occurred prior to the commencement of the strike.

16. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 14, including the employees listed below, made an unconditional offer to return to their former positions of employment:

Ager, Janet
Anthony, carol
Bankosh, Elnora
Bresnan, Genny
Dagan, Sharon
Delo, Donna
Delo, Donna
Fry, Lenore
Kiebler, Cindy
Klingensmith, Cindy
Lojersky, Jane
Long, Laurie
Martincic, Joseph
Patterson, Tonia
Pryts, Melrose
Ressler, Michelle
Sierka, Karen
Stanton, Sherri
Wallace, Linda
Wolford, Teresa
Wright, Connie

17. Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in paragraph 16 to their former positions of employment.

18. By the conduct described above in paragraph 2, Respondent has been interfering with, restraining, and coerc-

ing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

19. By the conduct described above in paragraph 17, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

20. By the conduct described above in paragraphs 2, 6 through 11 and 13, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

21. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

K. RE: RESPONDENT'S RICHLAND MANOR FACILITY LOCATED IN JOHNSTOWN, PENNSYLVANIA
6-CA-27883 and 6-CA-28051

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Richland facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

John Poltrack	–	Administrator
Ron Lindrose	–	Director of Nurses
Matt Harckom	–	Dietary Manager
Kimberly Csikos	–	Housekeeping and Laundry Supervisor
Yvette Bumford	–	Assistant Director of Nurses

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager

and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all times since about December 19, 1995, Respondent has denied representatives of District 1199P access to Respondent's Richland facility.

3. About December 19, 1995, Respondent removed District 1199P's bulletin board which had been located inside Respondent's Richland facility.

4. About January 23, 1996, Respondent, by Poltrack, at Respondent's Richland facility, threatened employees with discipline if they brought District 1199P literature into Respondent's Richland facility.

5. About January 23, 1996, Respondent, at its Richland facility, removed District 1199P literature from the employee break room.

6. About February 9, 1996, Respondent, by Lindrose, at Respondent's Richland facility, threatened employees with discipline if they brought District 1199P literature into Respondent's Richland facility.

7. The following employees of Respondent, herein called the Service and Maintenance Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees employed by the Employer at its Johnstown, Pennsylvania facility as certified by the National Labor Relations Board in Case Number 6-RC-9810, but excluding business office clerical employees, licensed practical nurses, registered nurses, social services/admissions coordinator, activities coordinators, department heads and guards, other professional employees and other supervisors as defined in the Act.

8. On October 14, 1988, in Case 6-RC-9810, District 1199P was certified as the exclusive collective-bargaining representative of the Service and Maintenance Unit.

9. At all times since October 14, 1988, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the Service and Maintenance Unit.

10. The following employees of Respondent, herein called the LPN Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time licensed practical nurses employed by the Employer at its Richland Manor facility in Johnstown, Pennsylvania; excluding service and maintenance employees, business office clerical employees, and guards, professional employees and supervisors as defined in the Act and as certified by the National Labor Relations Board Case Number 6-RC-10371.

11. On January 23, 1990, District 1199P was certified as the exclusive collective-bargaining representative of the LPN Unit.

12. At all times since January 23, 1990, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the LPN Unit.

13. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

14. The subjects set forth above in paragraphs 2, 3 and 13 relate to wages, hours and other terms and conditions of employment of the Service and Maintenance and the LPN Units and are mandatory subjects for the purposes of collective bargaining.

15. Respondent engaged in the conduct described above in paragraphs 2, 3 and 13 without adequate prior notice to District 1199P and without affording District 1199P an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

16. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 1199P gave notice to the Employer at its Richland facility of the intent of the employees in the Service and Maintenance and LPN Units to engage in strike action on or about March 29, 1996; and thereafter Local 1199P notified the Employer at its Richland facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) By letter dated March 30, 1996, Local 1199P notified the Employer at its Richland facility that it was amending the notice described above in subparagraph (a) by limiting the strike action to three days.

(c) Pursuant to the strike notices set forth above in subparagraphs (a) and (b), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by District 1199P and employed at Respondent's Richland facility ceased work concertedly and engaged in a strike.

17. The strike described above in paragraph 16 was caused by Respondent's unfair labor practices described above in paragraphs 2, 3, 13 and 15, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike.

18. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 16, including the employees listed below, made an unconditional offer to return to their

former positions of employment, thus reaffirming the notification set forth above in subparagraph 16(b) above that the strike action would be limited to three days:

Adamczyk, Eric
Beisel, Donna
Carolus, Diane
Carolus, Yvonne
Cauffiel, Loretta
Cauffiel, Melinda
Cekada, Terri
Clifford, Anne
Conway, Chris
Eck, Allan
Egan, Ja'Nise
Ellenberger, Gail
Forish, Ruth
Foster, Ella
Greck, Judy
Greene, Gloria
Harlin, Elaine
Havyer, William
Hostetler, Michelle
Krenjeck, Vicki
Krupka, Mary Lou
Lentine, Diana
Lucas, Pauline
Lupton, Sharon
Maffeo, Bobbi
Makin, Diana
Mardis, Amy
Markel, Cindy
McDonald, Alvin
McLaughlin, Georgiann
McNulty, Tammy
Middleton, Martilynne
Mohle, Connie

Moore, Jackie
Nagy, Joann
Ohler, Irene
Panick, Barbara
Phillips, Virginia
Plummer, Renee
Pynbkala, Margaret
Rosey, Marsha
Schryer, Barbara
Sliko, Carole
Smay, Margaret
Stigers, Cheryl
Susko, Beverly
Thomas, Delores
Thompson, Bonnie
Urbassik, Shirley
Vasbinder, Roberta
Voss, Lynnette
Young, Connie
Yurasek, Alvada
Zonts, Donna

19. Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in paragraph 18 to their former positions of employment.

20. By the conduct described above in paragraphs 2 through 6, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

21. By the conduct described above in paragraph 19, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employ-

ees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

22. By the conduct described above in paragraphs 2, 3, 13 and 15, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

23. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

L. RE: RESPONDENT'S WILLIAM PENN NURSING CENTER FACILITY LOCATED IN LEWISTOWN, PENNSYLVANIA
6-CA-27884 and 6-CA-28058

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's William Penn facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Lee Miller	–	Administrator
Roy King	–	Environmental Supervisor

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all times since about December 18, 1995, Respondent has denied representatives of District 1199P access to Respondent's William Penn facility.

3. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees employed by the Employer at its Lewistown, Pennsylvania facility located at 163 Summit Drive, Lewistown, Pennsylvania, as certified by the National Labor Relations Board in Case Number 6-RC-843 [sic], but excluding all registered nurses, licensed practical nurses, professional employees and guards and supervisors as defined in the Act.

4. On September 5, 1979, in Case 6-RC-8423, District 1199P was certified as the exclusive collective-bargaining representative of the Unit.

5. At all times since September 5, 1979, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the Unit.

6. Since about January 1996, Respondent reduced the working hours of its unit employees employed as certified nurse assistants whose identities are presently unknown to the General Counsel, but particularly within the knowledge of Respondent.

7. Respondent engaged in the conduct described above in paragraph 6 because the employees of Respondent joined and assisted District 1199P and engaged in concerted activities, and to discourage employees from engaging in these activities.

8. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

9. The subjects set forth above in paragraphs 2, 6 and 8 relate to waves, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

10. Respondent engaged in the conduct described above in paragraphs 2, 6 and 8 without adequate prior notice to Dis-

trict 1199P and without affording District 1199P an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

11. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 1199P gave notice to the Employer at its William Penn facility of the intent of the employees in the Service and Maintenance Unit to engage in strike action on or about March 29, 1996; and thereafter Local 1199P notified the Employer at its William Penn facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) By letter dated March 29, 1996, Local 1199P notified the Employer at its William Penn facility that it was amending the notice described above in subparagraph (a) by limiting the strike action to three days.

(c) Pursuant to the strike notices set forth above in subparagraphs (a) and (b), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by District 1199P and employed at Respondent's William Penn facility ceased work concertedly and engaged in a strike.

12. The strike described above in paragraph 11 was caused by Respondent's unfair labor practices described above in paragraphs 2, 6 through 8 and 10, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike.

13. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 11, including those employees listed below in subparagraphs (a) and (b), made an unconditional offer to return to their former positions of employment, thus reaffirming the notification set forth above in

subparagraph 11(b) above that the strike action would be limited to three days:

(a) Groce, Lori
Groce, Robin
Grubb, Josie
Hetrick, Wanda
Kahley, Joy
Kahley, Glenn
Kauffman, Emma
Kephart, Margaret
Kick, Kimberly
Kratzer, Sandra
Markel, Wanda
McArdle, Tracie
McCrory, Katie
Moyer, Lea
Page, Pauline
Pietrolungo, Karen
Rittenhouse, Kimberly
Semla, Anna
Solt, Jeanette
Steel, Tracy
Stewart, Lana
Wagner, Bryson
Webb, Linda
Willard, Christine
Yoder, April

(b) Berk, Lucinda
Dietz, LuAnn
Eaken, Melinda
Fisher, Roxanne
Fultz, Denise
Haubrick, Connie
Hetrick, Christin
Hinterberger, Pamela

Kibe, Sue
Ross, Carolyn
Smith, Glenda

14. (a) Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in subparagraph 13(a) to their former positions of employment.

(b) Since about April 4, 1996, Respondent, by letter, has failed and refused to fully reinstate certain striking employees including those named above in subparagraph 13(b) to their former positions of employment.

15. By the conduct described above in paragraph 2, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

16. By the conduct described above in paragraphs 6, 7 and 14, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

17. By the conduct described above in paragraphs 2, 6, 8 and 10, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

18. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

M. RE: RESPONDENT'S BEVERLY MANOR MOUNT PENN FACILITY LOCATED IN MT. PENN, PENNSYLVANIA
6-CA-27889 and 6-CA-28059

1. (a) At all material times David Poole held the position of Beverly Manor Mount Penn Administrator, and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all times since about December 9, 1995, Respondent has denied representatives of District 1199P access to Respondent's Mt. Penn facility.

3. At all times since about December 9, 1995, Respondent has removed all items placed on District 1199P's bulletin board located inside Respondent's Mt. Penn facility.

4. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees employed by the Employer at its Mount Penn, Pennsylvania facility located at R.D. 3, Box 3559, Mount Penn, Pennsylvania, certified by the National Labor Relations Board in Case 4-RC-15747; said unit excluding business office clerical employees, licensed practical nurses, registered nurses, department heads and guards, other professional employees and other supervisors as defined in the Act.

5. On December 10, 1984, in Case 4-RC-15747, District 1199P was certified as the exclusive collective-bargaining representative of the Unit.

6. At all times since December 10, 1984, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the Unit.

7. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

8. The subjects set forth above in paragraphs 2, 3 and 7 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

9. Respondent engaged in the conduct described above in paragraphs 2, 3 and 7 without adequate prior notice to District 1199P and without affording District 1199P an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

10. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 1199P gave notice to the Employer at its Mt. Penn facility of the intent of the employees in the Service and Maintenance Unit to engage in strike action on or about March 29, 1996; and thereafter Local 1199P notified the Employer at its Mt. Penn facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) By letter dated March 29, 1996, Local 1199P notified the Employer at its Mt. Penn facility that it was amending the notice described above in subparagraph (a) by limiting the strike action to three days.

(c) Pursuant to the strike notices set forth above in subparagraphs (a) and (b), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by District 1199P and employed at Respondent's Mt. Penn facility ceased work concertedly and engaged in a strike.

11. The strike described above in paragraph 10 was caused by Respondent's unfair labor practices described above in paragraphs 2, 3, 7 and 9, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike.

12. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 10, including the employees listed below in subparagraphs (a) and (b), made an unconditional offer to return to their former positions of employment, thus reaffirming the notification set forth above in subparagraph 10(b) above that the strike action would be limited to three days:

(a) Barry, Melissa
Dragovich, Sharon
Drexel, Alicia
Frasnelli, Julianna
Frymoyer, Wendy
Gabriel, Maria
Gazda, Jennifer
Grebe, Sue
Gring, Audrey
Guides, Shelia
Helwig, Deana
Johnson, Rochelle
Jones, Roxanne
Kline, Beth
McMullen, Theresa
Mohring, Stephanie
Pedraza, Maria
Persad, Leena
Pieja, Sue
Pulaski, David
Putnam, Melissa

Ridenour, Deanie
Shock, Donna
Sites, Mary
Smith, Yvonne
Sweitzer, Lisa
Torres, Frances
Trupp, Joanne
Ungurean, Florentina
Wisner, Marlene

(b) Martinez, Jolee
Montgomery, Faye
Parker, Wendy
Reber, Karen
Schultz, Faye
Shotz, Melodie
Takats, Sue

13. (a) Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in subparagraph 12(a) to their former positions of employment.

(b) Since about April 4, 1996, Respondent, by letter, has failed and refused to fully reinstate certain striking employees including those named above in subparagraph 12(b) to their former positions of employment.

14. By the conduct described above in paragraphs 2 and 3, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

15. By the conduct described above in paragraph 13, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employ-

ees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

16. By the conduct described above in paragraphs 2, 3, 7 and 9, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

17. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

N. RE: RESPONDENT'S BEVERLY MANOR OF LANCASTER FACILITY LOCATED IN LANCASTER, PENNSYLVANIA
6-CA-27890 and 6-CA-28048

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Lancaster facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Larry Ayers	–	Administrator
Nancy Frye	–	Director of Nursing
Brian Zimmerman	–	Dietary Manager

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. About early December, 1995, Respondent removed Local 668's bulletin board which had been located inside Respondent's Lancaster facility.

3. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of

collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance associates including nursing assistants, housekeepers, floor care workers, dietary aides, cooks, laundry aides, physical therapy aides, activity aides and unit secretaries employed by the Employer at its 425 North Duke St., Lancaster, Pennsylvania facility; said unit excluding all other associates including professional associates, office clerical associates, management associates, central supply clerk, guards and supervisors as defined in the National Labor Relations Act.

4. On April 10, 1991, in Case 4-RC-17563, Local 668 was certified as the exclusive collective-bargaining representative of the Unit.

5. At all times since April 10, 1991, based on Section 9(a) of the Act, Local 668 has been the exclusive collective-bargaining representative of the Unit.

6. Since about February 20, 1996, Respondent reduced the working hours of certain of its bargaining unit employees whose identities are presently unknown to the General Counsel, but particularly within the knowledge of Respondent.

7. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

8. The subjects set forth above in paragraphs 2, 6 and 7 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

9. Respondent engaged in the conduct described above in paragraphs 2, 6 and 7 without adequate prior notice to Local 668 and without affording Local 668 an opportunity to

bargain with Respondent with respect to this conduct and the effects of this conduct.

10. (a) About March 14, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 668 gave notice to the Employer at its Lancaster facility of the intent of the employees in the Service and Maintenance Unit to engage in strike action on or about March 29, 1996; and thereafter Local 668 notified the Employer at its Lancaster facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) By letter dated March 29, 1996, Local 668 notified the Employer at its Lancaster facility that it was amending the notice described above in subparagraph (a) by limiting the strike action to three days.

(c) Pursuant to the strike notices set forth above in subparagraphs (a) and (b), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by Local 668 and employed at Respondent's Lancaster facility ceased work concertedly and engaged in a strike.

11. The strike described above in paragraph 10 was caused by Respondent's unfair labor practices described above in paragraphs 2, 6, 7 and 9, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike.

12. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 10, including the employees named below, made an unconditional offer to return to their former positions of employment, thus reaffirming the notification set forth above in subparagraph 10(b) above that the strike action would be limited to three days:

Aytche, Margaret
Carney, Richard
Ferrick, June
Flores, Norma
Johnson, Arlinetta
Ortiz, Lucy
Ortiz, Wanda
Struebel, Margaret
Williams, Charles

14. Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in paragraph 12 to their former positions of employment.

15. By the conduct described above in paragraph 2, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

16. By the conduct described above in paragraph 14, Respondent has been discriminating in regard to the hire or tenure or terms or conditionsof employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

17. By the conduct described above in paragraphs 2, 6, 7 and 9, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

18. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

O. RE: RESPONDENT'S BLUE RIDGE HAVEN CONVALESCENT CENTER FACILITY LOCATED IN CAMP HILL, PENNSYLVANIA
6-CA-27891

1. (a) At all material times Dennis McGowan held the position of Blue Ridge Haven Convalescent Center West Administrator, and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. About December 1, 1995, Respondent, by McGowan, at Respondent's Blue Ridge facility, announced that Local 668 representatives would no longer have access to Respondent's Blue Ridge facility.

3. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees, including nursing assistants, housekeepers, floormen, dietary aides, cooks, laundry aides, physicial [sic] therapy aides, unit secretaries, central supply room clerks, medical record clerks, patient care coordinators, activities coordinators and graduate practical nurses employed by the Employer at its 770 Poplar Church Road, Camp Hill, Pennsylvania facility; said unit excluding all other employees including professional employees, managerial employees, RN's, LPN's, business office clerical employees, caseworkers, secretary-receptionists, guards and supervisors as defined in

the Act, temporary and casual employees and guards and supervisors as defined in the National Labor Relations Act.

4. On December 24, 1984, in Case 4-RC-15764, Local 668 was certified as the exclusive collective-bargaining representative of the Unit.

5. At all times since December 24, 1984, based on Section 9(a) of the Act, Local 668 has been the exclusive collective-bargaining representative of the Unit.

6. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

7. The subjects set forth above in paragraphs 2 and 6 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

8. Respondent engaged in the conduct described above in paragraphs 2 and 6 without adequate prior notice to Local 668 and without affording Local 668 an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

9. By the conduct described above in paragraph 2, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

10. By the conduct described above in paragraphs 2, 6 and 8, Respondent has been failing and refusing to bargai collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

11. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

P. RE: RESPONDENT'S CALEDONIA MANOR FACILITY LOCATED IN FAYETTEVILLE, PENNSYLVANIA
6-CA-27892 and 6-CA-28060

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Caledonia facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Maria Spinzola	–	Administrator
Carol Lyttle	–	Director of Nurses
Constantine Wright	–	Assistant Director of Nurses

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all times since December 1, 1995, Respondent has denied Local 668 representatives access to its Caledonia facility.

3. About December 13, 1995, Respondent removed Local 668's bulletin board which had been located inside Respondent's Caledonia facility.

4. About February 6, 1996, Respondent, by Spinzola, at Respondent's Caledonia facility, threatened employees with reduction of unit work in retaliation for their engaging in Union activities.

5. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees, including nursing assistants, housekeepers, dietary aides, cooks, laundry aides, physical

therapy aides, activity aides, and unit secretaries employed by the Employer at its 3301 Lincoln Way East, Fayetteville, Pennsylvania facility; said unit excluding all other employees including licensed practical nurses, administrative employees, managerial employees, professional employees, temporary and casual employees, and guards and supervisors as defined in the National Labor Relations Act.

6. On July 5, 1985, in Case 6-RC-9575, Local 668 was certified as the exclusive collective-bargaining representative of the Unit.

7. At all times since July 5, 1985, based on Section 9(a) of the Act, Local 668 has been the exclusive collective-bargaining representative of the Unit.

8. Since about January 4, 1996, Respondent reduced the working hours of its unit employees in the dietary, housekeeping and laundry departments whose identities are presently unknown to the General Counsel, but particularly within the knowledge of Respondent.

9. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

10. The subjects set forth above in paragraphs 2, 3, 8 and 9 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

11. Respondent engaged in the conduct described above in paragraphs 2, 3, 8 and 9 without adequate prior notice to Local 668 and without affording Local 668 an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

12. (a) About March 14, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 668 gave

notice to the Employer at its Caledonia facility of the intent of the employees in the Service and Maintenance Unit to engage in strike action on or about March 29, 1996; and thereafter Local 668 notified the Employer at its Caledonia facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) By letter dated March 29, 1996, Local 668 notified the Employer at its Caledonia facility that it was amending the notice described above in subparagraph (a) by limiting the strike action to three days.

(c) Pursuant to the strike notices set forth above in subparagraphs (a) and (b), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by Local 668 and employed at Respondent's Caledonia facility ceased work concertedly and engaged in a strike.

13. The strike described above in paragraph 12 was caused by Respondent's unfair labor practices described above in paragraphs 2 through 4, 8, 9 and 11, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike.

14. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 12, including the employees listed below in subparagraphs (a) and (b), made an unconditional offer to return to their former positions of employment, thus reaffirming the notification set forth above in subparagraph 12(b) above that the strike action would be limited to three days:

(a) Atherton, Edward
Elser, Yvonne
Fickes, Brenda

Fordyce, Heather
Flory, Sherrill
Guyer, Laleen
Hershey, Isabelle
Hudson, Joyce
Konstantakopoulos, Christine
Messing, Betty
Miley, Virginia
Mort, Helen
Scott, Kimberly
Snyder, Betty
Stoner, Tracy
Teal, Patricia
Witherspoon, Diane

(b) Byers, Penny
Cervantes, Linda
Elser, Yvonne
Englert, Dody
Foltz, Denise
Hines, Phyllis
Kauffman, Tena
Martina, Pamela
Teal, Sandra
Weller, Brenda

15. (a) Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in subparagraph 14(a) to their former positions of employment.

(b) Since about April 4, 1996, Respondent, by letter, has failed and refused to fully reinstate certain striking employees including those named above in subparagraph 14(b) to their former positions of employment.

16. By the conduct described above in paragraphs 2, 3 and 4, Respondent has been interfering with, restraining,

and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

17. By the conduct described above in paragraph 15, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

18. By the conduct described above in paragraphs 2, 3, 8, 9 and 11, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

19. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Q. RE: RESPONDENT'S CAMP HILL CARE CENTER FACILITY LOCATED IN CAMP HILL, PENNSYLVANIA
6-CA-27893

1. (a) At all material times Courtney O'Connor held the position of CHCC Administrator, and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. About December 1, 1995, Respondent announced that Local 668 representatives would no longer have access to Respondent's CHCC facility.

3. About January, 1996, Respondent removed Local 668's bulletin board which had been located in Respondent's CHCC facility.

4. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees, including nurses aides, orderlies, cooks, dietary aides, activity aides, housekeepers, laundry aides and floor care employees, but excluding all professional employees, office clerical employees, management employees, casual per diem employees, guards and supervisors as defined in the Act.

5. On August 25, 1992, in Case 5-RC-13758, Local 668 was certified as the exclusive collective-bargaining representative of the Unit.

6. At all times since August 25, 1992, based on Section 9(a) of the Act, Local 668 has been the exclusive collective-bargaining representative of the Unit.

7. Since about January 11, 1996, Respondent reduced the hours of its unit employees in the nursing and housekeeping departments whose identities are presently unknown to the General Counsel, but particularly within the knowledge of Respondent.

8. Respondent engaged in the conduct described above in paragraph 7 because these employees of Respondent joined and assisted Local 668 and engaged in concerted activities, and to discourage employees from engaging in these activities.

9. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

10. The subjects set forth above in paragraphs 2, 3, 7 and 9, relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

11. Respondent engaged in the conduct described above in paragraphs 2, 3, 7 and 9 without adequate prior notice to Local 668 and without affording Local 668 an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

12. By the conduct described above in paragraphs 2 and 3, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

13. By the conduct described above in paragraphs 7 and 8, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

14. By the conduct described above in paragraphs 2, 3, 7, 9 and 11, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

15. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

R. RE: RESPONDENT'S CARPENTER CARE CENTER FACILITY LOCATED IN TUNKHANNOCK, PENNSYLVANIA
6-CA-27894 and 6-CA 28053

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's Carpenter Care facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Jeff Rentner	–	Administrator
Gloria Eastwood	–	Assistant Director of Nurses
Bill Evans	–	Maintenance Supervisor

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

3. At all material times Wayne Chapman held the position of Respondent Beverly-PA's Regional Director of Associate Relations and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

4. At all times since about December 29, 1995, Respondent has denied representatives of District 1199P access to Respondent's Carpenter Care facility.

5. The following employees of Respondent, herein called the Service and Maintenance Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees employed by the Employer at its

> Tunkhannock, Pennsylvania facility located at RD 3 Virginia Drive, Tunkhannock, Pennsylvania, certified by the National Labor Relations Board in Case 4-RC-16519; said unit excluding business office clerical employees, licensed practical nurses, registered nurses, department heads and guards, other professional employees and other supervisors as defined in the Act.

6. On June 15, 1988, in Case 4-RC-16519, District 1199P was certified as the exclusive collective-bargaining representative of the Service and Maintenance Unit.

7. At all times since June 15, 1988, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the Service and Maintenance Unit.

8. The following employees of Respondent, herein called the LPN Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time licensed practical nurses employed by the Employer at its Carpenter Care Facility in Tunkhannock, Pennsylvania; excluding service and maintenance employees, charge nurses, business office clerical employees, and guards, professional employees and supervisors as defined in the Act and as certified by the National Labor Relations Board.

9. On December 10, 1987, in Case 4-RC-16520, District 1199P was certified as the exclusive collective-bargaining representative of the LPN Unit.

10. At all times since December 10, 1987, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the LPN Unit.

11. At all times since about January 14, 1996, Respondent has refused to process various grievances previously filed by District 1199P.

12. Since about December 19, 1995, the Union, by letter, has requested that Respondent furnish District 1199P with the absenteeism records for the previous six months for all employees in both the Service and Maintenance and the LPN Units.

13. Since about January 31, 1996, District 1199P, by letter, has requested that Respondent furnish the Union with information leading to the suspension of its unit employee Sue Teetsel, including co-worker or family statements.

14. The information requested by District 1199P, as described above in paragraphs 12 and 13, is necessary for, and relevant to, District 1199P's performance of its duties as the exclusive collective-bargainig representative of the Service and Maintenance and the LPN Units.

15. Since about December 29, 1995, Respondent, by failing to respond to the request described above in paragraph 12, has failed and refused to furnish District 1199P with the information requested by it as described above in paragraph 12.

16. Since about January 31, 1996, Respondent, by failing to respond to the request described above in paragraph 13, has failed and refused to furnish District 1199P with the information requested by it as described above in paragraph 13.

17. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

18. The subjects set forth above in paragraphs 4, 11 through 13 and 15 through 17 relate to wages, hours and other terms and conditions of employment of the Service and Maintenance and the LPN Units and are mandatory subjects for the purposes of collective bargaining.

19. Respondent engaged in the conduct described above in paragraphs 4, 11 through 13 and 15 through 17 without adequate prior notice to District 1199P and without affording District 1199P an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

20. (a) About March 15, 1996, in accordance with the requirements of Section 8(g) of the Act, Local 1199, gave notice to the Employer at its Carpenter Care facility of the intent of the employees in the Service and Maintenance and LPN Unit to engage in strike action on or about March 29, 1996; and thereafter Local 1199P notified the Employer at its Carpenter Care facility that the strike notice was being amended so that the strike would begin on April 1, 1996.

(b) By letter dated March 30, 1996, Local 1199P notified the Employer at its Carpenter Care facility that it was amending the notice described above in subparagraph (a) by limiting the strike action to three days.

(c) Pursuant to the strike notices set forth above in subparagraphs (a) and (b), from about 6:00 a.m. on April 1, 1996, to about 7:00 a.m. on April 4, 1996, certain employees of Respondent represented by District 1199P and employed at Respondent's Carpenter Care facility ceased work concertedly and engaged in a strike.

21. The strike described above in paragraph 20 was caused by Respondent's unfair labor practices described above in paragraphs 4, 11 through 13, 15 through 17 and 19, as well as Respondent's unfair labor practices at other facilities as described in this Consolidated Complaint which occurred prior to the commencement of the strike.

22. About 7:00 a.m. on April 4, 1996, by letter, Respondent's employees who had engaged in the strike described above in paragraph 21, including the employees

listed below in subparagraphs (a) and (b), made an unconditional offer to return to their former positions of employment, thus reaffirming the notification set forth above in subparagraph 21(b) above that the strike action would be limited to three days:

(a) Adams, Desara
Barnes, Linda
Crum, Howard C.
Dewolfe, Patricia
Graham, Deborah
Kasmierski, Darla J.
Kintner, Ellen
Kitchnesky, Laurie
Kline, Gail
Miller, Ruthann
Newberry, Laurie
Newhart, Joan
Novakaw, Melinda
Ridoski, Marie
Rau, Sonia
Richardson, Andrea
Robinson, Beverly
Ross, Wilbur
Russell, Karen
Schell, Bonnie
Sherwood, Deborah
Sickler, Carol
Solsman, Lisa
Sickerman, Linda
Stackhouse, Brian
Stang, Dean
Stephens, Frank
Ward, Bonnie
Wittig, Loretta

(b) Bevan, Christine
Kitchen, Melissa
Redmond, Deborah
Roberts, Alice
Rossavik, Heidi
Watts, Gloria
Wood, Rachel

23. (a) Since about April 4, 1996, Respondent, by letter, has failed and refused to reinstate striking employees including those named above in subparagraph 22(a) to their former positions of employment.

(b) Since about April 4, 1996, Respondent, by letter, has failed and refused to fully reinstate certain striking employees including those named above in subparagraph 22(b) to their former positions of employment.

24. By the conduct described above in paragraph 4, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

25. By the conduct described above in paragraph 23, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

26. By the conduct described above in paragraphs 4, 11 through 13, 15 through 17 and 19, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

27. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

S. RE: RESPONDENT'S STROUD MANOR FACILITY LOCATED IN STROUDSBURG, PENNSYLVANIA
6-CA-27895

1. (a) At all material times Louise Brown held the position of Stroud Manor Director of Nurses, and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

(b) At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all times since about December 13, 1995, Respondent has denied representatives of District 1199P access to Respondent's Stroud facility.

3. The following employees of Respondent, herein called the Service and Maintenance Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees employed by the Employer at 221 East Brown Street, East Stroudsburg, Pennsylvania, nursing aides, orderlies, physical therapy transporter, housekeeping aides, dietary aides, cooks, laundry aides, maintenance employees and activity aides; said unit excluding office clerical employees, administrator, director of nursing assistant director of nursing, bookkeeper, housekeeping supervisor, food service supervisor, activities director, maintenance supervisor, social service director, social service assistant, medical records technician, LPNs, RNs, guards [sic] managerial employees, casual employees and supervisors as defined in the National Labor Relations Act.

4. On November 21, 1983, in Case 4-RC-15267, District 1199P was certified as the exclusive collective-bargaining representative of the Service and Maintenance Unit.

5. At all times since November 21, 1983, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the Service and Maintenance Unit.

6. The following employees of Respondent, herein called the LPN Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time licensed practical nurses employed by the Employer at its Stroud Manor facility in East Stroudsburg, Pennsylvania; excluding all other employees, guards and supervisors as defined in the Act and as certified by the National Labor Relations Board Case Number 4-RC-17623.

7. On September 4, 1991, in Case 4-RC-17623, District 1199P was certified as the exclusive collective-bargaining representative of the LPN Unit.

8. At all times since September 4, 1991, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the LPN Unit.

9. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

10. The subjects set forth above in paragraphs 2 and 9 relate to wages, hours and other terms and conditions of employment of the Service and Maintenance and the LPN Units and are mandatory subjects for the purposes of collective bargaining.

11. Respondent engaged in the conduct described above in paragraphs 2 and 9 without adequate prior notice to District

1199P and without affording District 1199P an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

12. By the conduct described above in paragraph 2, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

13. By the conduct described above in paragraphs 2, 9 and 11, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

14. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

T. RE: RESPONDENT'S YORK TERRACE NURSING CENTER FACILITY LOCATED IN POTTSVILLE, PENNSYLVANIA
6-CA-27896

1. (a) At all material times the following individuals held the positions set forth opposite their respective names at the Respondent's York Terrace facility and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Arlene Postupak	–	Administrator
Cindy McCarthy	–	Business Manager
Terry Schofstal	–	Activities Director
Carolyn Nelson	–	Director of Nurses

(b) At all material times Wayne Chapman held the position of Respondent Beverly-PA's Regional Director of

Associate Relations and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2. At all material times Ronald J. St. Cyr held the position of Respondent Beverly H&R's Labor Relations Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

3. At all times since about December 14, 1995, Respondent has denied representatives of District 1199P access to Respondent's York Terrace facility.

4. At all times since about mid-December, 1995, Respondent has removed all items placed on District 1199P's bulletin board located inside Respondent's York Terrace facility.

5. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees employed by the Employer at its 24th and West Market Street, Pottsville, Pennsylvania facility including nursing assistants, dietary aides, housekeeping aides, cooks and maintenance employees; excluding all other employees, administrator, director of nursing, assistant director of nursing, all registered nurses and all licensed practical nurses, the social service director [sic] activities coordinator, dietary supervisor, housekeeping supervisor, maintenance director, all professional and technical employees [sic] temporary and casual employees and guards and supervisors as defined in the National Labor Relations Act.

6. On August 22, 1983, in Case 4-RC-15380, District 1199P was certified as the exclusive collective-bargaining representative of the Unit.

7. At all times since August 22, 1983, based on Section 9(a) of the Act, District 1199P has been the exclusive collective-bargaining representative of the Unit.

8. (a) By letter recieved by the Charging Parties on November 28, 1995, Respondent announced that it would discontinue the 1199P Health and Welfare Fund HMO effective January 1, 1996.

(b) About December 5, 1995, by letter, the Charging Parties requested that Respondent bargain over the decision to discontinue the 1199P Health and Welfare Fund HMO.

(c) About December 11, 1995, by letter, Respondent refused to bargain over the continuation or replacement of the 1199P Health and Welfare Fund HMO.

9. About January 1, 1996, Respondent imposed replacement health insurance plan(s) for the employees in the Unit.

10. (a) In about late January 1996, Respondent altered its overtime policy by removing unit employees who volunteered for overtime from the mandatory overtime rotation.

(b) About February 8, 1996, Respondent altered its overtime policy by ceasing the practice of soliciting volunteers for overtime from among unit employees not currently scheduled for duty.

11. About January, 1996, Respondent increased its unit employees' premium for HMO insurance coverage.

12. The subjects set forth above in paragraphs 3, 4 and 8 through 11 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

13. Respondent engaged in the conduct described above in paragraphs 3, 4 and 8 through 11 without adequate prior

notice to District 1199P and without affording District 1199P an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

14. By the conduct described above in paragraphs 3 and 4, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act inviolation of Section 8(a)(1) of the Act.

15. By the conduct described above in paragraphs 3, 4, 8 through 11 and 13, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

16. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, in view of the extensive and repeated course of conduct and pattern of unfair labor practice violations engaged in by this Respondent, including, inter alia, those found by the Administrative Law Judge and the Board in *Beverly California Corporation f/k/a Beverly Enterprises*, 310 NLRB No. 37 (1993), (*Beverly I*), those found in other prior Board Decisions, those found by the Administrative Law Judges in *Beverly California Corporation f/k/a Beverly Enterprises*, JD-119-94, (*Beverly II*), and *Beverly California Corporation f/k/a Beverly Enterprises*, 6-CA-24221, et al., JD(ATL)-22-95, (*Beverly III*), as well as other cases filed against the Respondent, and as alleged in this proceeding, the General Counsel seeks, inter alia, the following remedial relief:

A. An Order which applies to all of Respondent's divisions, regions, subdivisions and individual facilities nationwide and which requires Respondent to, inter alia; (1) cease

and desist from any and all conduct unlawful under the National Labor Relations Act at any of its facilities; (2) post in all its facilities and Notice to Employees that may issue in this proceeding; and (3) send written instruction to all its administrators, managers and supervisors at all of its facilities requiring them to comply with the provisions of said Order and Notice;

B. An Order requiring Respondent to grant to the labor organizations who filed charges in this proceeding, in *Beverly I, Beverly II,* and *Beverly III,* herein collectively referred to as the Charging Party Unions, and their representatives, upon request: 1) reasonable access to its bulletin boards and all places where notices to employees are customarily posted; 2) reasonable access to employees in its facilities in nonwork areas during employees' nonwork time; and 3) notice of, and equal time and facilities for the Charging party Unions to respond to, any address made by Respondent to its employees at any location on the question of union representation;

C. An Order requiring Respondent to afford, upon request, any labor organization, including the Charging Party Unions, the right to deliver a 30-minute speech to employees on working time prior to any Board election which may be scheduled in which the labor organization is a participant.

D. An Order requiring that Respondent:

> Notify the Regional Director for Region Six, in writing, within 20 days from the date of this Order, what steps have been taken to comply therewith. For the purpose of determining or securing compliance with this Order, the Board or any of its duly authorized representatives may obtain discovery from the Respondent, its officers, agents, successors and assigns or any other person having knowledge concerning any compliance matter, in the manner provided by the

Federal Fules of Civil Procedure. Such discovery shall be conducted under the supervision of the United States Court of Appeals enforcing this Order and may be had upon any matter reasonably related to compliance with this Order, as enforced by the Court.

The provisions of B, C and D shall be sought for a period of two years from the date of the posting of any Notice to Employees provided by the Board in this proceeding; and

The General Counsel further seeks an order requiring Respondent to reinstate those strikers referred to above, displacing if necessary any employees hired to replace them. Finally, the General Counsel seeks other relief as may be appropriate to remedy the unfair labor practices alleged.

PLEASE TAKE NOTICE that commencing at 1:00 p.m. on the 15th day of July 1996, and on consecutive days thereafter, a hearing will be conducted in Room 1634, 1000 Liberty Avenue, Pittsburgh, Pennsylvania, before an administrative law judge of the Board on the allegations in this consolidated complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

Respondent is further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an answer to this consolidated complaint within 14 days from the service of it, and that, unless Respondent does so, all the allegations in the consolidated complaint shall be considered to be admitted to be true and shall be so found by the Board. Respondent is also notified that pursuant to the Board's Rules and Regulations, Respondent shall serve a copy of its answer on each of the other parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Proceedings Pursuant to Section 10 of the National Labor Relations Act, As Amended, are attached.

Dated at Pittsburgh, Pennsylvania, this 9th day of May 1996.

/s/ Gerald Kobell
Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
1000 Liberty Avenue - Room 1501
Pittsburgh, Pennsylvania 15222

Attachments

AGREEMENT

1. The General Counsel of the National Labor Relations Board (General Counsel) and Beverly Health and Rehabilitation Services, Inc., formerly Beverly California Corporation (Respondent or Beverly), are now litigating in three proceedings before the National Labor Relations Board (the Board) unfair labor practices alleged to have occurred in health care facilities operated by Respondent. Each of these proceedings represents the consolidation of various cases of alleged unfair labor practices. The first proceeding, herein referred to as Beverly I (Cases 6-CA-19444, et al.), involving 33 of Respondent's facilities, was decided by the Court of Appeals for the Second Circuit on February 28, 1994 (17F.3d 580, 145 LRRM 2648 (2nd Cir., 1994)). The second proceeding, which is pending before the Board, herein referred to as Beverly II (Cases 6-CA-20188-46, et al.), involves 20 of Respondent's facilities. The third proceeding, which is pending before the Administrative Law Judge, herein referred to as Beverly III (Cases 6-CA-24221, et al.), involves 10 of Respondent's facilities. (Beverly II and III together herein are referred to as the "Two Pending Proceedings"). In the Two Pending Proceedings, as was asserted in Beverly I, General Counsel contends that Respondent and all of its subsidiaries constitute a single employer within the meaning of the Act and seeks broad remedial relief, which, among other things, the General Counsel seeks to extend not only to the facilities specifically involved in each of the respective cases but also to all the other facilities operated by Respondent, as was sought in Beverly I (such remedy is hereinafter referred to as the "nationwide remedy"). Respondent maintains that the nationwide remedy sought by the General Counsel in the Two Pending Proceedings, and which was sought in Beverly I, is contrary to law based on the facts and wholly inappropriate and that each of the Respondent's facilities should be treated on an individual basis for purposes of remedy.

2. The parties have entered into this Agreement in order to effectuate the purpose and policies of National Labor Relations Act (the Act) and to permit efficient and timely resolution or litigation of other cases now pending or which may hereafter arise involving Respondent's facilities (such other cases are hereinafter referred to as the "Other Cases".) The parties also seek through this Agreement to afford the persons and parties involved therein expeditious relief where possible without in any way affecting the parties' respective positions in Beverly I, II and III.

3. The General Counsel and Beverly recognize that concluding the litigation of the Two Pending Proceedings, including review of the cases by the Board and possibly also by Courts of Appeals, may take a prolonged period of time. Pending final and definitive resolution of the Two Pending Proceedings, the General Counsel and Beverly desire to reach an understanding concerning the resolution of the Other Cases. The General Counsel and Beverly agree that, notwithstanding their differing positions in Beverly I, II and III, and without any prejudice to their respective positions, the Other Cases will be handled by the Regional Offices of the Board on an individual basis, based on the facts of the particular case, in accordance with the Board's normal procedures for handling and settling unfair labor practice cases. Notwithstanding the foregoing, cases may be consolidated, in accordance with the Board's normal procedures concerning consolidation of cases, where consolidation is deemed appropriate for reasons unrelated to the single employer issues litigated or the remedies being sought in the Two Pending Proceedings, such as for reasons of efficiency or convenience of counsel or witnesses.

4. The cases which currently comprise Beverly IV, which involve five of Respondent's facilities (Cases 6-CA-25548-11, et al.), and which are covered by the nomenclature "Other Cases", will be transferred back to the Regional Offices in which they were originally filed for either settle-

ment or formal hearing on an individual basis in accordance with the Board's normal procedures for handling and settling unfair labor practice cases. The cases which currently comprise Beverly IV will by a separate order issued by the Regional Director of Region 6 be severed and settled or tried separately on the dates currently set for the hearings in Beverly IV, unless other dates are agreed upon by counsel.

5. For the duration of this Agreement, for the reasons set forth herein, General Counsel will not include allegations in unfair labor practice complaints against Beverly which allege that Beverly is a single employer, as alleged in Beverly I, II and III, or that "extraordinary" remedies are appropriate, and such extant allegations in Other Cases will be withdrawn. In such cases, Beverly will not answer that it is not a single employer or that the aforesaid remedy requested in Beverly I, II and III is inappropriate as long as these issues are not raised in the proceeding.

6. Nothing herein shall preclude the General Counsel from consolidating cases in the future if the General Counsel determines that such action is appropriate; nor shall anything herein preclude Beverly form arguing that any past or future consolidation of cases against Beverly is contrary to the Board's Rules and Regulations, a denial of due process, or otherwise unlawful or improper. Nothing herein precludes the General Counsel from terminating this Agreement at any time, as set forth later herein, and from renewing its effort to obtain a nationwide remedy or broader remedial relief; nor shall anything herein preclude Beverly from terminating this Agreement at any time, as set forth later herein, or from arguing that a nationwide remedy or broader remedial relief is unlawful, unwarranted, or otherwise improper.

7. Neither Beverly nor the General Counsel is obligated to settle any of the Other Cases or any future charges, and it is agreed that the General Counsel may choose to proceed to a hearing on any charges that are not settled. In the event that

Beverly or the General Counsel choose to litigate a complaint involving a specific nursing home or homes, the General Counsel, for the duration of this Agreement, will seek remedial relief (including notice posting and a cease and desist order) that will apply to the individual nursing home(s) at which the unfair labor practices allegedly occurred. However, nothing herein shall preclude the General Counsel from arguing in a specific case that the facts of that particular case warrant the extension of remedial relief beyond the location where the unfair labor practices allegedly occurred.

8. Respondent agrees that it will not argue before the Board or any Court or any other forum that any complaint, settlement, or withdrawal of any of the Other Cases which does not treat Respondent and the facility or facilities involved as a single-employer or does not provide for the same or similar relief sought by the General Counsel in Beverly I, II or III in any way diminishes or impairs the General Counsel's positions in the Two Pending Proceedings. Similarly, the General Counsel agrees that he will not argue that any complaint, settlement, or withdrawal of any of the Other Cases in any way diminishes or impairs Respondent's position in the Two Pending Proceedings that it is not a single employer within the meaning of the Act, and that the nationwide remedy and other special remedies are inappropriate.

9. Any settlement agreement covering unfair labor practice charges filed in any of the Other Cases, whether informal or formal, that does not contain a non-admission clause, may be used by the General Counsel to argue that it demonstrates a proclivity to violate the National Labor Relations Act (''the Act'') and may be utilized by the Board and reviewing courts for that purpose as they deem appropriate. Nothing in this Agreement shall be deemed to preclude Beverly from taking the position or arguing before the Board and reviewing courts that the alleged unfair labor practices

covered by any such settlement of any of the Other Cases do not demonstrate, by their character, nature, frequency, severity and/or otherwise a proclivity on Respondent's part to violate the Act.

10. This Agreement may be made public and may be presented either to the Board or to any Court in connection with any proceeding before such body involving the parties. By entering into this Agreement, the parties authorize their respective counsel to move to strike any assertion made by the other party either orally or in any pleading, petition, brief or other instrument that may be filed with the Board or any Court that any complaint, settlement, or withdrawal of any of the Other Cases modifies or contradicts the respective positions of the parties in Beverly I, II or III, and the party against whom such motion is made agrees to instruct their counsel to consent to such motion.

11. This Agreement may be terminated at any time by either party by giving the other party ten days' prior written notice of its intention to terminate, provided, however, that the termination of the Agreement will not affect the status of cases settled under this Agreement nor the rights or obligations of the parties set forth herein in paragraphs 8, and 10, nor will it affect the rights and obligations of the parties set forth herein in paragraph 9 with regard to any cases settled by the parties during the pendency of this Agreement.

General Counsel National Labor Relations Board	Beverly Health and Rehabilitation Services, Inc.
By: /s/ Fred Feinstein	By: /s/ Robert W. Pommerville
Title: General Counsel	ROBERT W. POMMERVILLE Title: Executive Vice-President General Counsel and Secretary
Date: March 22, 1995	Date: March 10?, 1995

CONSTITUTION OF THE UNITED STATES

Article III

Section 1. The judicial power of the United States, shall be vested in one supreme Court, and on such inferior Courts as the Congress may from time to time ordain and establish. . . .

Section 2. The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States. . . .

FEDERAL STATUTES

28 U.S.C. § 1331. Federal Question.

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1337. Commerce and antitrust regulations; amount in controversy, costs.

(a) the district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies. . . .

61 Stat. 136, 29 U.S.C. § 153(d).

(d) General Counsel—Appointment and tenure—Powers and duties—Vacancy. There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to the Board members) and over the officers and employees in the regional offices. He shall

have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10 [29 USCS § 160], and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. . . .

NATIONAL LABOR RELATIONS BOARD

CASEHANDLING MANUAL

(PART ONE)

UNFAIR LABOR PRACTICE PROCEEDINGS

10154 *Noncompliance:* In the event that, in the opinion of the Regional Director, the provisions of the agreement have not or will not be carried out, the Regional Director will notify the parties of this fact and inform them that, despite the execution of the agreement, such action as appears necessary to effectuate the purposes of the Act will be taken. Thereafter, appropriate action, as if there had been no settlement agreement, will be taken; complaint will be issued, or reissued, and pressed on its merits and not on the basis of noncompliance with the agreement.

Supreme Court, U.S.
FILED
AUG 1 1997
CLERK

No. 96-1934

In the Supreme Court of the United States

OCTOBER TERM, 1996

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., PETITIONER

v.

FREDERICK L. FEINSTEIN, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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14 pp

QUESTION PRESENTED

Whether the district court has subject matter jurisdiction to review or enjoin the prosecution of an unfair labor practice complaint by the General Counsel of the National Labor Relations Board, where it is alleged that such prosecution breaches an agreement between the General Counsel and the charged party as to the manner in which the General Counsel would exercise his prosecutorial discretion.

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is reported at 103 F.3d 151. The opinion of the district court (Pet. App. 17a-22a) is reported at 132 Lab. Cas. ¶ 11,613

JURISDICTION

The court of appeals entered its judgment on December 31, 1996. A petition for rehearing was denied on March 4, 1997. The petition for a writ of certiorari was filed on June 2, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The National Labor Relations Act (NLRA) provides that "[i]t shall be an unfair labor practice" for an employer or labor organization to engage in conduct that infringes in specified ways upon the rights guaranteed employees under the Act. 29 U.S.C. 158. The Act confers upon the National Labor Relations Board (Board) the authority "to prevent any person from engaging in any unfair labor practice * * * affecting commerce." 29 U.S.C. 160(a). It further states that the Board's General Counsel "shall have final authority, on behalf of the Board, in respect of the investigation of [unfair labor practices] and issuance of complaints * * *, and in respect of the prosecution of such complaints before the Board." 29 U.S.C. 153(d).

An unfair labor practice case is initiated by the filing of a charge with the regional director of the Board for the region in which the alleged unfair labor practice occurred. If a settlement cannot be reached in a case that the regional director has found to be meritorious, the regional director, acting on behalf of the General Counsel, issues a complaint. The charged party must file an answer and is entitled to a hearing before an administrative law judge (ALJ). After the hearing, the ALJ makes a recommended decision, which is subject to review by the Board. 29 U.S.C. 160(b)-(d); 29 C.F.R. 101.10-101.15, 102.20-102.50. "Any person aggrieved by a final order of the Board" may obtain judicial review in the courts of appeals. 29 U.S.C. 160(f).

2. Petitioner is a long-term health care company that operates more than 703 individual facilities in 33 States and the District of Columbia. Pet. App. 2a.

Beginning in 1986, the General Counsel issued unfair labor practice complaints against petitioner and its affiliated entities. Pursuant to provisions of the Board's Rules and Regulations, 29 C.F.R. 102.33(a)(2), the General Counsel consolidated the cases into three groups. In the first group of cases, the Board found that petitioner had committed more than 130 violations of the Act at 32 facilities and ordered nationwide relief that included corporate-wide posting of notices and cease and desist orders at all of petitioner's nursing homes. *Beverly Cal. Corp.*, 310 N.L.R.B. 222, 228, 231-232 (1993). On appeal, the Second Circuit enforced most of the Board's decision and order, but denied enforcement of the nationwide remedial order. *Torrington Extend-A-Care Employee Ass'n* v. *NLRB*, 17 F.3d 580, 596 (1994). A second and third group of cases involving 30 of petitioner's facilities are pending before the Board on appeal from ALJ decisions. Pet. App. 172a, 176a.

On March 22, 1995, the General Counsel and petitioner entered into an agreement regarding the handling of other unfair labor practice charges against petitioner. The agreement provided that other cases against petitioner would be handled on an individual basis, would not contain allegations that petitioner was a "single employer," and would not seek nationwide remedies. Pet. App. 2a. The agreement provided, however, that the General Counsel could consolidate cases under certain conditions, such as "for reasons of efficiency or convenience of counsel or witnesses." *Id.* at 177a.

On March 14, 1996, the Board's Regional Director for Region 6, on behalf of the General Counsel, issued an order consolidating three complaints that relate to petitioner's facility in Pennsylvania known as the

Grandview Healthcare Center and 19 other Pennsylvania facilities. Pet. App. 2a, 33a-56a. On March 29, 1996, petitioner filed a civil action against the General Counsel in the United States District Court for the District of Columbia, seeking compensatory damages and an injunction requiring the General Counsel to withdraw the consolidated unfair labor practice complaint and to "issue any Complaint on new allegations only in conformance with the Agreement." *Id.* at 31a. The Regional Director subsequently postponed the hearing on the consolidated complaint, and the General Counsel gave ten days notice of his intention to terminate the agreement, as permitted by the agreement's terms. After the termination of the agreement, the Regional Director issued a second consolidated complaint that included additional unfair labor practice charges against petitioner. *Id.* at 3a.

3. The district court dismissed petitioner's suit for lack of subject matter jurisdiction. Pet. App. 16a-22a. The court reasoned that "[i]t is well settled that a federal district court does not have jurisdiction to enjoin or restrain the Board or its agents from conducting unfair labor practice proceedings." *Id.* at 19a. The court further explained that "[i]f and when this case reaches the adjudicatory stage, [petitioner] will have ample opportunity to raise any arguments concerning [the General Counsel's] breach of the Agreement before an Administrative Law Judge, the Board, and then before a court of appeals." *Id.* at 20a-21a. Additionally, relying on this Court's decisions in *NLRB* v. *United Food & Commercial Workers Union, Local 23*, 484 U.S. 112, 130 (1987), and *NLRB* v. *Sears, Roebuck & Co.*, 421 U.S. 132, 138 (1975), the district court concluded that "the conduct at issue

here is an exercise of prosecutorial discretion, which is not reviewable in this Court." Pet. App. 21a.

3. The court of appeals affirmed. Pet. App. 1a-11a. The court held that the General Counsel's conduct in "issu[ing] a complaint" is not subject to district court review, because the NLRA "does not authorize judicial review of the General Counsel's decision to file or withdraw a complaint." *Id.* at 5a. The court further ruled that the "fact that the General Counsel's exercise of his statutory powers may violate [petitioner's] contract rights does not in itself render the NLRA's jurisdictional limitations inapplicable." *Id.* at 8a. Rather, the court explained that the General Counsel's "decision to prosecute the alleged violations in a particular manner is effectively reviewed through the ordinary administrative review scheme" after "the Board reaches a final disposition of the underlying charges." *Id.* at 10a.

ARGUMENT

1. Petitioner contends (Pet. 14) that Sections 1331 and 1337(a) of Title 28 provide the district court with jurisdiction over petitioner's breach of contract claims against the General Counsel because the agreement "arises from federal law." It is well settled, however, that the NLRA does not provide for judicial review of the General Counsel's prosecutorial decisions, including the filing or withdrawing of an unfair labor practice complaint. See *NLRB* v. *United Food & Commercial Workers Union, Local 23*, 484 U.S. 112, 124-126, 131 (1987); *NLRB* v. *Sears, Roebuck & Co.*, 421 U.S. 132, 138 (1975); *Vaca* v. *Sipes*, 386 U.S. 171, 182 (1967).

In this case, petitioner seeks an injunction ordering the General Counsel to withdraw the complaint

against petitioner. Pet. App. 31a. As the court of appeals stated, the General Counsel's decision to issue a complaint "is a quintessential example of a prosecutorial decision. It involves a balancing of culpability, evidence, prosecutorial resources, and the public interest." *Id.* at 6a. Accordingly, the court of appeals properly concluded that "[t]he civil action filed by [petitioner] plainly conflicts with the General Counsel's authority to issue complaints" (*id.* at 8a) and the district court therefore lacked jurisdiction over petitioner's civil action to enjoin the General Counsel's issuance of the unfair labor practice complaint against petitioner.[1]

2. Petitioner also contends (Pet. 9-11) that the decision below conflicts with this Court's decision in *United States* v. *Winstar Corp.*, 116 S. Ct. 2432 (1996), which held that the government was liable for breach of contract with certain thrift institutions, notwith-

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[1] Petitioner suggests (Pet. 20-21) that this Court's decision in *Leedom* v. *Kyne*, 358 U.S. 184 (1958), provides the district court with jurisdiction over this case. As petitioner conceded below (Pet. C.A. Br. 13), however, "[t]his is not a *Leedom* v. *Kyne* case." In *Leedom* v. *Kyne*, the Court held that a district court had jurisdiction to vacate the Board's certification of a bargaining unit that was in violation of 29 U.S.C. 159(b)(1). The Court explained that the Board's decision was "made in excess of its delegated powers and contrary to a specific prohibition in the Act," 358 U.S. at 188, and was not a final order otherwise subject to the judicial review provisions under the Act, *id.* at 190-191. Unlike in *Kyne*, the General Counsel's decision to file a consolidated complaint against petitioner is not alleged to have violated any provision of the Act. See Pet. C.A. Br. 13 ("Nothing in the Complaint alleges any breach of a mandatory duty in the Act."). Additionally, any adjudication that results in a final Board order unfavorable to petitioner is subject to judicial review under 29 U.S.C. 160(f).

standing a subsequent change in the relevant law which barred the government from honoring those contracts. The decision below does not hold, however, that the General Counsel is released from the agreement with petitioner. See Pet. App. 10a ("Of course, it is not the fact that the General Counsel can freely abjure his contractual obligation."). Rather, the court held that although petitioner may not enjoin the General Counsel's filing of a complaint, petitioner may raise its contentions "on the merits" in the underlying unfair labor practice proceeding before the Board, and "the Board's decision on the matter will in turn be entitled to judicial review by the Court of Appeals." *Id.* at 11a. Indeed, petitioner has raised its agreement with the General Counsel as an affirmative defense to the second consolidated complaint. *Id.* at 10a. Thus, petitioner "will, if necessary, have its day in court on the charging issue." *Id.* at 11a.

Similarly, there is no merit to petitioner's further contention (Pet. 13) that unless it "can actually obtain * * * speedy judicial review" of the General Counsel's decision to prosecute in this case, petitioner is deprived of its "Fifth Amendment property right arising from a contract with the government." This Court long ago held that the procedural provisions of the NLRA afford "adequate opportunity to secure judicial protection against arbitrary action" (*NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 47 (1937)) and, therefore, that "Congress had power to vest exclusive jurisdiction in the Board and the Circuit Court of Appeals" (*Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50 (1938)). Accordingly, petitioner has no property or other right to have a court consider its contention that the General Coun-

sel breached its agreement by filing the first and second consolidated complaints, "until the prescribed administrative remedy has been exhausted." *Myers*, 303 U.S. at 50-51.

3. Citing *Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200, 212-213 (1994), petitioner contends (Pet. 16) that it may obtain direct judicial review of the General Counsel's decision to issue complaints against petitioner because its "breach of contract claim is 'wholly collateral' to the judicial review provision of the NLRA, and is quite 'outside the agency's expertise.'" There is no merit to that contention.

The agreement allegedly violated by the General Counsel relates to the investigation and prosecution of unfair labor practice cases against petitioner. Pet. App. 2a. As the court of appeals correctly observed (*id.* at 6a), the relief sought by petitioner's complaint seeks to recast the pending unfair labor practice proceeding in order to conform it to petitioner's interpretation of the agreement. Thus, the propriety of the consolidated complaint as filed is not "wholly collateral" to the pending administrative proceeding. Moreover, petitioner's suit raises matters within the Board's expertise, because it alleges that the General Counsel breached its agreement to file unfair labor practice complaints in accordance with the Board's normal procedures for handling and settling such complaints and not to include in those complaints allegations of single employer status or requests for nationwide remedies. *Id.* at 27a-28a. Those allegations relate to the day-to-day handling of unfair labor practice cases and are of direct concern to the Board, which has the ultimate responsibility for ensuring the proper and fair administration of the NLRA. See

29 U.S.C. 160(a).[2] Petitioner's claim, in short, concerns nothing more nor less than the propriety of a complaint by the General Counsel pending before the Board. Thus, the court of appeals properly concluded that petitioner was required in the first instance to present its contract claim to the Board.[3]

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[2] Although petitioner correctly notes (Pet. 17-18) that the Board does not have plenary authority to administer and enforce collective bargaining agreements, the agreement at issue here does not set forth collectively bargained terms and conditions of employment. Indeed, it is not an agreement with a bargaining representative; nor is it a collective agreement.

[3] Contrary to petitioner's suggestion (Pet. 18-19), the decision below does not conflict with *Alabama Power Co.* v. *FERC*, 993 F.2d 1557 (D.C. Cir. 1993). There, the court held it had jurisdiction to review a Federal Energy Regulatory Commission order to investigate a company's rate schedule that was allegedly in breach of a settlement agreement between the company and FERC. Unlike here, however, the order was issued by the Commission itself, not by any prosecutorial arm of the agency, and thus it was a "final" order for purposes of the judicial review provision of the Federal Power Act. 993 F.2d at 1566-1567. Compare *FTC* v. *Standard Oil Co.*, 449 U.S. 232 (1980) (Federal Trade Commission's issuance of complaint is not final agency action and therefore not judicially reviewable before the conclusion of the administrative adjudication). In the present case there has been no final order of the Board within the meaning of 29 U.S.C. 160(e) and (f). The court below therefore correctly concluded (Pet. App. 9a-10a) that *Alabama Power* is inapposite. In any event, any intra-circuit conflict between the decision below and *Alabama Power* would not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

BEVERLY HEALTH AND REHABILITATION SERVICES, INC,

Petitioner,

v.

FREDERICK L. FEINSTEIN, GENERAL COUNSEL,
NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

RESPONSE OF PETITIONER TO BRIEF OF RESPONDENT IN OPPOSITION

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ARGUMENT

1. The fallacy that pervades the General Counsel's Opposition is the illusion that the jurisdictional question presented by the Petition concerns "the propriety" of an administrative complaint. This is not a "run of the mill" prosecutorial discretion case. It is wholly unconcerned with the General Counsel's complaint issuance discretion. That discretion was exercised when the Agreement Petitioner seeks to enforce was entered. There is no discretion to refuse to honor the terms of that Agreement, and the District Court has jurisdiction to enforce the Agreement according to its terms.

The sole predicate for the assertion of federal district court jurisdiction is the Agreement between Beverly and the General Counsel. The Agreement arises under federal law, and, therefore, the lower court has "subject matter" jurisdiction conferred by 28 U.S.C. §§1331 and 1337(a) to determine Beverly's rights and the General Counsel's obligations ***under the Agreement***. Paragraph 7, thereof, expressly provides "that the General Counsel may choose to proceed to a hearing [*i.e.* issue an administration complaint] on any charges that are not settled."(App. 178a). None of the judicial precedents cited by the courts below and by the General Counsel (Br.4,5) involve a ***contract*** "arising under" federal law. In all these cases federal district court jurisdiction was asserted upon an administrative complaint issued by the General Counsel. Since that is not the case here, these authorities and the General Counsel's argument based upon them are irrelevant to the jurisdictional question presented.

However, the General Counsel, just like any other federal government official who enters into a contract under authority conferred by federal law, is subject to federal district court jurisdiction for breach of contract. The two administrative complaints issued against Beverly during the term of the Agreement are ***evidence*** of the General Counsel's breach of the

Agreement. They are not the predicate in and of themselves for federal district court jurisdiction. Petitioner concedes that without the Agreement, the administrative complaints would not provide federal court jurisdiction. The Opposition offers neither argument nor precedent to the contrary.

2. The Opposition refers to Beverly's seeking an "injunction", and thereby attempts to portray the jurisdiction question as judicial interference with complaint issuance authority. To the contrary, Beverly requests no "injunction" or any relief from prosecution. First, as we have noted, subject matter jurisdiction is exercised over the Agreement, not the administrative complaints. Second, to the extent the General Counsel ignored the pre-complaint procedures and pleading proscriptions promised Beverly by the Agreement, judicial authority is limited to breach of contract remedies. Thus, either the federal court could order specific performance and have the General Counsel re-process the unions' charges in conformity with the Agreement, or award damages. In either case no "injunction" against prosecution results.

3. The General Counsel misconstrues the application of *Leedom v. Kyne,* 358 U.S. 184 (1958) to the breach of contract jurisdictional question presented. As is evident Beverly does not claim a breach of a mandatory statutory duty owed Beverly under the National Labor Relations Act. Our argument is that this Court's reasoning in *Leedom* supports direct judicial review here. See Petition at p.20-21. Whether the General Counsel violates statutory or contract rights, he is accountable in federal district court, because the preservation of the sanctity of contract, by analogy to *Leedom*, is no less important a role for the federal judiciary than the protection of statutory rights directly involved in *Leedom.*

4. Unless parties, like Beverly, who enter into agreements with federal officials can obtain prompt judicial

evaluation of actions in cases presenting arguable breach of the official's contractual promises, federal officials will be able to deny an effective redress by forcing private parties to expend limited resources in perpetual administrative proceedings that can provide no timely or effective relief. Without "front end" accountability through up front judicial review, federal officials, like the General Counsel here, can with impunity nullify their own contractual promises. The Court of Appeals recognized and remedied this inequitable result in *Alabama Power Co. v. FERC*, 993 F.2d 1557 (DC Cir. 1993). Just as in that case, Beverly's injury resulting from the defense of two massive consolidated complaints is real, immediate, and continuing, with no pre- administrative hearing opportunity to determine the validity of Beverly's breach of contract claim. There is no rational basis for Beverly to endure some elusive opportunity to raise an "affirmative defense" available, if at all, ***after*** the General Counsel has denied Beverly the benefits of its contractual bargain.

5. As viewed by the courts below, the administrative review procedure trumpeted below is an empty vessel. The Agency's Administrative Law Judge denied Beverly any opportunity to obtain evidence in any form from the General Counsel's representatives about the application of the pre-complaint procedures specified in the Agreement to charges filed against Beverly during the Agreement's term. Then, not surprisingly, the ALJ granted the General Counsel's motion to strike the breach of contract defense. Without supporting evidence in the record, it is immaterial whether the ALJ or the Board, as blindly claimed by the D.C. Circuit (App. 11a), "revisits the matter": there is no evidence to review! Beverly has been denied the opportunity for discovery or to make an administrative record. This Court has long upheld direct judicial review where, as here, no factual record exists and discovery is foreclosed by the agency's procedural rules to

prevent such a record from coming into existence. *See,e.g., Thunder Basin Coal Co. v. Reich,* 510 U.S. 200, 212-13 (1994).

6. The Opposition's administrative exhaustion argument is also founded upon a faulty premise. District Court evaluation is sought of the Agreement, not the consolidated administrative complaints as the General Counsel insists(Opp. p.8). This case does not challenge a "final unfair labor practice order". It does raise contract issues and seeks relief the Labor Board simply has no authority to award. The judicial subject matter is exclusively the pre-complaint procedures agreed to by the General Counsel. If the General Counsel breached the Agreement, as Beverly contends, relief is limited to specific performance, that is, the application of the pre-complaint case handling procedures to charges filed during the term of the Agreement, not the dismissal of the administrative charges. Neither Beverly's breach of contract action nor the Agreement itself confer any judicial role over the decision to issue or not to issue an administrative complaint. Whether the General Counsel elects to re-process, dismiss, or settle the charges is entirely up to him. The Board itself has no authority or even "direct concern" to review or oversee the prosecutorial decisions relating to the pre-complaint procedures, requested relief, or the form of pleadings adopted or filed by the General Counsel. In 1947 Congress separated the Agency's prosecutorial and adjudicatory functions. *NLRB v. Sears, Roebuck & Co.,* 421 U.S. 132 (1975). As the Board has no adjudicatory role over these matters, it follows that the Board can claim no "expertise" in determining whether the General Counsel abides by his contracts. This is a historic role for the federal judiciary, and to interpose administrative exhaustion in

this breach of contact case effectively nullifies Beverly's contract rights.[1]

7. The Opposition does not dispute or even question the significant and far-reaching aspects of the Petition that justifies certiorari within Rule 10 of the Rules of this Court. Beverly's Agreement with the General Counsel is but one of the "enormous variety" of similar contracts between federal agencies and regulated parties. These contracts arise under federal law within the literal scope of 28 U.S.C. §1331 and §1337(a). The mutual promises and obligations create property rights that can be unilaterally nullified by the signatory federal official, as happened here. The timely enforceability of property rights, such as Beverly's, is, as Justice Souter stated in *United States v. Winstar Corp.*, 518 U.S.___, 116 S.Ct. 2432, 2459 (1996), as important to the "Government's own long-run interests as a reliable contracting partner. . . ." as it is to the regulated parties. Congress granted original jurisdiction to the federal district courts pursuant to 28 U.S.C. §1331 over alleged breaches of this category of property rights. The Court of Appeals erred by denying Beverly and all other present and future contracting parties in regulated industries timely recourse to the federal forum Congress provided.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Petition pps.8-22, this Court should issue a writ of *certiorari* to the United States Court of Appeals for the District of Columbia Circuit.

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[1] There is no substance to the inference (Opp. p.3) that the prolonged charge "stockpiling" and peculiar consolidations on the extraordinary scale evident here complies with the Agreement. To the contrary, the contracting parties agreed to end these procedures in any future case (App. 176a-177a).

Respectfully submitted,

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